

(2010) 01 DEL CK 0345

Delhi High Court

Case No: C.M. No. 4219 of 2009 in Writ Petition (C) No. 21069 of 2005

Delhi Jal Board

APPELLANT

Vs

Industrial Tribunal and Another

RESPONDENT

Date of Decision: Jan. 7, 2010

Acts Referred:

- Industrial Disputes Act, 1947 - Section 17B

Citation: (2010) 3 LLJ 809

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Judgement

Kailash Gambhir, J.

By this application fled u/s 17B of the I.D. Act the applicant respondent seeks grant of wages as per Minimum wages Act applicable in Delhi till final disposal of the petition.

2. Counsel for the applicant states that since the day of his unlawful termination he is out of employment. Counsel further submits that despite efforts the respondent workman could not secure employment and it has become very difficult for him to support himself and his family. Counsel further submits that the applicant/workman is entitled to the salary in accordance with the Minimum Wages Act applicable in Delhi effective from the date of the award till the final disposal of the present petition. Counsel or the respondent workman has also relied upon the judgment of this Court in Delhi Transport Corporation v. Inderjeet Singh. Opposing the present application counsel for the petitioner/non-applicant submits that the respondent did not prefer to move the present application earlier as the respondent workman is gainfully employed elsewhere. Counsel further submits that although the petitioner could not lay its hands to furnish any documentary proof with regard to the employment of the respondent/workman but in any case he must be working with some concern. Counsel, further submits that the present petition challenging the impugned order dated April 21, 2004 was filed on October 7, 2005 and the present

application has been moved by the applicant workman quite belatedly i.e. on March 26, 2009 and this fact in itself would show that the respondent/workman is gainfully employed somewhere.

I have heard counsel for the parties and perused the record.

3. It is a settled legal position that the employer has to place sufficient and cogent material before the Court for satisfying it that the workman had in fact, been employed in any other establishment and had been receiving adequate remuneration. Considering the facts that the petitioner has not been able to place on record any material to show the employment of the respondent/workman, therefore, there is no option left to the Court but to believe the averments made by the applicant that he is out of employment.

4. Section 17B of the I.D. Act confers valuable rights on the workmen and correspondingly imposes onerous obligations on the employer. This provision is a piece of social welfare legislation and aims at mitigating the hardship caused to the workman during the protracted litigation on account of delay in implementation of the award in High Court or Supreme Court. This Court has reiterated in its numerous decisions the very well-settled law laid down in AIR 1998 511 (SC) and Regional Authority, Dena Bank and Another Vs. Ghanshyam, by the Apex Court while analyzing the Statement of Objects and Reasons for inserting Section 17B it held:

It follows that in the event of an employer not reinstating the workman and not seeking any interim relief in respect of the award directing reinstatement of the workman or in case where the Court is not inclined to stay such award in to the workman has two options either to initiate proceeding to enforce the award or be content with receiving the full wages last drawn by him without prejudice to the result of the proceedings preferred by the employer against the award till he is reinstated or proceedings are terminated in his favour, whichever is, earner.

The argument of the petitioner is that there was a. delay in filing of this application by the workman. In the Division Bench judgment of this Court in Delhi Transport Corporation v. Inderjeet Singh L.P.A. No. 392/2008 decided on July 29, 2008 was held;

As regards the delay by the workman in approaching the Court for relief u/s 17B I.D. Act, it requires to be recalled that the workman could have filed such an application only after the DTC filed its writ petition. The object of the provision is that the Wages should not be denied to the workman when he has been able to state on affidavit that he has remained unemployed and the employer is unable to show anything to the contrary. In the circumstances, the benefit u/s 17B, I.D. Act cannot be denied to the workman on the ground that he filed the application three years after, the writ petition was filed by the DTC, The entitlement of the workman to wages u/s 17B hinges on whether in fact he remained unemployed since his termination. That it is a question of fact. In light of the unrebutted claim of the workman to that effect in

the instant case, his application u/s 17B I.D. Act had to be allowed.

5. Hence, in the light, of the above, the application is allowed and the petitioner management is directed to pay to the respondent the last drawn wages or the minimum wages, whichever are higher, from the date of filing of the award till the final disposal of the petition. The arrears of wages shall be released to the respondent within four weeks. The petitioner management shall continue to pay to the respondent the said wages on month-to-month basis, on or before the 7th day of each month. The respondent/applicant is also directed to give an undertaking with an advance copy to the counsel for the petitioner management to the effect, that in case the petitioner management ultimately succeeds in the writ petition, he shall refund/repay the difference of amount of last drawn wages and the minimum wages. The respondent shall also furnish his latest address in the said undertaking. The undertaking be filed by the respondent/applicant within three weeks from the date of this order.

With these directions the application is disposed of.