

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% CM No. 16004/2011

In

W.P. (C) 1630/2006

+ Date of Decision: 11th July, 2012

M.T.N.L.Petitioner

**! Through: Ms. Rachana Joshi Issar &
Mr. Alok Prakash, Advocates**

Versus

\$ RAM RATTAN ...Respondent

Through: Mr. Anuj Aggarwal, Advocate

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K.BHASIN, J:

The present application has been filed by the respondent-workman under Section 17-B of the Industrial Disputes Act, 1947 ('Act' for short) seeking directions to the petitioner to pay to him wages which should not be less than

the minimum wages with effect from the date of passing of the award by the Central Government Industrial Tribunal-cum-Labour Court in ID No. 56/95 till the disposal of this writ petition filed by the petitioner –management for setting aside the award whereby the reinstatement of the respondent-workman in service has been directed.

2. This application is supported by an affidavit of the respondent-workman to the effect that he is not employed in any establishment and to support his family and to meet even day to day household expenses he is dependent on his friends and relatives.

3. The respondent-workman joined the petitioner as a Driver with effect from 28.09.1982. He was treated as a daily rated casual/muster roll worker and was paid wages as fixed and revised from time to time under the Minimum Wages Act by the Delhi Administration. An Inquiry was instituted against the respondent on some allegations of misconduct and he was held guilty. The Disciplinary Authority passed the order of his dismissal from service. The

respondent-workman raised an industrial dispute about his dismissal from service which was referred for adjudication to CGIT. Vide impugned award dated 26.09.2005 the action of the petitioner-management was held to be unjustified and illegal and consequently reinstatement of the respondent-workman was ordered.

4. The petitioner challenged the award by filing the present petition. Stay of the operation of the award dated 26.09.2005 was granted by this Court.

5. This application was filed in the year 2011.

6. Learned counsel for the petitioner submitted that the application filed by the respondent deserves to be dismissed only on the ground of it having been filed at a highly belated stage inasmuch as the writ petition was filed in the year 2006 while this application was filed in the year 2011 and in support of this argument she cited one decision of this Court

in the case of '*Management of M/s Municipal Corporation of Delhi v. Bhanwar Singh & Anr.*', 2010 Lab. I.C. 2933.

It was also contended that relief, if any, is to be granted should be granted only from the date of filing of this application and not from the date of award.

7. Learned Counsel for the applicant-respondent, on the other hand, has submitted that mere delay in filing this application is no ground for denying the relief of wages to him. Reliance has been placed on an unreported judgment of a Division Bench of this Court in the case of '*Delhi Transport Corporation v. Inderjeet Singh*' given on 29.07.2008 in *LPA No. 392 of 2008*. Regarding the effect of delay in filing the application under Section 17 B of the Act this Court had observed:

“As regards the delay by the workman in approaching the Court for relief under Section 17 B ID 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 under Section 17 B ID 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 under Section 17 B hinges on whether in fact he remained unemployed since his termination. That it is a question of fact.

Learned counsel submitted that an order for payment of minimum wages to the respondent deserves to be passed.

8. In my view this application has to be allowed and cannot be rejected on the ground of delay in filing of the same in view of the decision of the Division Bench of this Court in the case of “*DTC vs. Inderjit Singh*” (*supra*). Similarly the relief of payment of wages to the respondent-workman cannot be given from the date of filing of this application in view of the judgment of the Supreme Court in the case of “*Regional Authority, Dena Bank v. Ghanshyam*”, *JT 2001 (Supp 1) SC 22* and relevant observations of the Court in this regard are reproduced below:

“12. We have mentioned above that the import of Section 17 B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the Statement of Objects and Reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17 B was inserted in the Act.”

9. The petitioner has not produced any material to show that the respondent was gainfully employed. Once the respondent has filed an affidavit to the effect that he was unemployed the onus shifted to the petitioner to bring on record necessary material to show that he was gainfully employed. That has not been done.

10. This application is accordingly allowed. The petitioner-management is directed to pay to respondent-workman his last drawn wages or the minimum wages fixed from time to time, whichever are higher, from the date of passing of the impugned Award till the pendency of this writ petition, provided the workman files an undertaking within two weeks that in case the petitioner succeeds finally in its writ petition and it is found that he has received wages in excess of what

he was entitled to get under Section 17-B of the I.D. Act he shall refund the excess amount to the petitioner-management within four weeks from the date of passing of the judgment by this Court. Thereafter, the petitioner shall pay to him the wages upto July, 2012 within four weeks and in case this undertaking is not given by the workman the petitioner-management shall be liable to pay him last drawn wages only after the expiry of period of two weeks given to the workman for giving undertaking. Future monthly wages from the month of August, 2012 thereafter shall be paid to the workman on or before 10th day of each succeeding month.

P.K. BHASIN, J

JULY 11, 2012