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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 196/2013

BHALLEY RAM

..... Appellant

Through: Mr. Anuj Aggarwal, Mr. Sachin Sharma and
Mr. Atul Nagaraj, Advs with appellant in
person

versus

AGRICULTURAL PRODUCE MARKET COMMITTEE

..... Respondent

Through: Mrs. Avnish Ahlawat, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V.K. JAIN

ORDER

% 11.04.2013

CM 5386/2013 & 5388/2013 (exemption)

Exemption allowed subject to all just exceptions.

The applications stand disposed of.

CM 5387/2013 (delay)

The delay in filing the appeal is condoned.

The application stands disposed of.

LPA 196/2013

Vide order dated 23.9.1994, the services of the appellant, who was at that time working as a *Safai Karamchari* with the respondent were terminated. Aggrieved from the termination of his service, the appellant raised an industrial dispute which was referred to the Labour Court for adjudication. Vide award dated 10.4.2003, the Labour Court directed

reinstatement of the appellant with continuity in service and 70% back wages. The said award was challenged by the respondent by way of W.P© No.6395/2003, which is still pending disposal before the learned Single Judge of this Court. The operation of the award has been stayed vide an interim order dated 17.10.2003. On an application filed by the appellant under Section 17-B of the Industrial Disputes Act, the learned Single Judge passed an order dated 19.5.2005 directing the respondent to pay to the appellant, the last wages drawn by him which should not be less than the minimum wages, from the date of passing of the award till disposal of the writ petition. Vide office order dated 17.10.2007, the respondent required the appellant to resume his duty. In compliance of the said order, the appellant resumed duties on the same date. At the time of termination of his services vide order dated 24.9.1994, the appellant was being paid salary in the pay scale of Rs.750-940. Despite his joining service pursuant to the order dated 17.10.2007, the respondent continued to pay only the minimum wages instead of paying salary in terms of the pay scale attached to the post which the appellant was holding at the time his services were terminated. The appellant preferred CM No.833/2009 in W.P(C) No.6395/2003 seeking a direction to the respondent to pay him the same salary and allowances which were being paid to his counterparts, with effect from 17.10.2007. The said application was dismissed vide the impugned order dated 13.7.2009. The appellant preferred yet another application seeking salary for the aforesaid pay scale with effect from 17.10.2007. That application was dismissed vide order dated 24.1.2012. Being aggrieved from the aforesaid order, the appellant has filed this appeal challenging the order dated

24.1.2012 as well as the earlier order dated 13.7.2009. He has also filed CM 5387/2013 seeking condonation of delay in filing the appeal.

2. During the course of arguments, the learned counsel for the appellant drew out attention to the decision of this Court in LPA 606/2012 decided on 19.02.2013. In the above referred case, after passing of the order under Section 17-B of the Industrial Dispute Act during pendency of the writ petition, the workman joined duties in terms of the offer made to him by the employer, but was not paid the salary applicable to the post on which he was made to work. One of the issues which arose for our consideration was as to what would be the emolument to which the workman joining duties pursuant to such an offer made by the employer would be entitled. The Court after consideration of the issue, *inter alia*, took the following view:

“7. Section 17-B of the Industrial Disputes Act obligates the employer to pay full last wages drawn by the workman during pendency of the proceedings filed by him challenging the award directing reinstatement of the workman, till the time such proceedings are pending in the High Court or the Supreme Court. This section does not mandate an employer to reinstate the employee during pendency of such proceedings. The employer may, therefore, choose not to take work from the employee while continue to pay full last wages drawn by him, during pendency of the proceedings before the High Court or the Supreme Court. Of course, the liability to pay full last wages drawn by the workman would arise only where the workman had not been employed in any establishment during such period and an affidavit has been filed by him to this effect.

The proviso to Section 17-B provides that where it is proved to the satisfaction of the Court before which such proceedings are pending, that the workman had been employed and had been receiving adequate remuneration during such period or part thereof, no such wages shall be payable to the workman for such a period or part, as the case may be. The proviso, therefore, indicates that even if the workman has been employed during such period, but has not been getting adequate remuneration, he may be entitled to some payment from the employer though such payment would only be the difference between full last wages drawn by him and the remuneration received by him during such period, or part thereof, as the case may be. Thus, the emphasis of the Legislature is upon payment of adequate remuneration to the workman during the period proceedings challenging the reinstatement of the workman remained pending before the High Court or the Supreme Court.

8. In our opinion, if the employer instead of continue to pay full last drawn wages without taking any work from the workman decides to reinstate him so that he does not have to pay such wages without taking any work from the workman, he will have to pay, to the workman, such wages which he would have been paid had he been freshly employed by the petitioner before the High Court or the Supreme Court, as the case may be. It would be extremely unfair to the workman to deny appropriate wages while taking adequate work from him. The appropriate wages, in our opinion, in such a situation would be the wages which the employer would have paid to a fresh employee having the experience and qualifications of the workman who has been reinstated pending proceedings before the High Court or the Supreme Court. It can hardly be disputed that such wages cannot be less than the minimum wages to which such a

workman is entitled to under the provisions of Minimum Wages Act. It would be extremely unfair to a workman to take work from him in the year 2003 and pay him the wages of the year 1985. We are, therefore, not inclined to take such a view.”

The learned counsel for the appellant also relies upon the decision of the learned Single Judge of this Court in *DTC vs. Phool Singh* [2010 IV AD (Delhi) 223].

After arguments, it has been agreed by the learned counsel for the parties that the delay in filing the appeal may be condoned and the appeal may be disposed of with a request to the learned Single Judge to decide the writ petition which is pending since the year 2003, at an early date. We accordingly dispose of the appeal with a request to the learned Single Judge to decide the writ petition as far as possible within a period a period of three months.

The appeal stands disposed of accordingly.

CHIEF JUSTICE

V.K. JAIN, J

APRIL 11, 2013
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