

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **CM APPL. 12140/2010 IN W.P.(C) 1929/2006**

+ **Date of Decision: 11<sup>th</sup> April, 2012**

# **GAIL INDIA LTD. ...Petitioner**  
! Through: Mr Aman Lekhi, Sr. Advocate with  
Mr. Sanjeev Sagar, Ms. Priti Goswami  
& Ms. Srishti Saxena, Advs.

**Versus**

\$ **TARKESHWAR PRASAD KHARAWAR ...Respondent**  
Through: Mr. Anuj Aggarwal, Adv.

**CORAM:**

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

**ORDER**

**P.K. BHASIN, J**

This application has been filed by the respondent-workman under Section 17-B of the Industrial Disputes Act, 1947 ('the Act' in short) for payment of wages to him during the pendency of this writ petition filed by his employer challenging the award dated 22.11.2005 of the labour Court directing his reinstatement in service without back wages after holding his dismissal from service to be not justified.

2. The respondent-workman claims to be employed and he has filed his affidavit to that effect.

3. The petitioner-management has in its reply to this application opposed the same mainly on two grounds and during the course of hearing on this application also those grounds were pressed into service by Shri Aman Lekhi, learned senior counsel for the petitioner. First ground of opposition was that even though the writ petition was instituted in the year 2006 and the respondent had entered appearance in January,2007 but this application was filed more than three years thereafter in the year 2010 and that delay in moving the application itself is sufficient to deny him the benefit under Section 17-B and also for the reason that even after filing that application he was prolonging the hearing of the writ petition to continue to get the benefit of wages under Section 17-B. Second ground raised in opposition to this application was that it having been held by the labour Court itself in the award under challenge that the respondent had produced forged certificates of his being a scheduled tribe candidate while seeking employment with the petitioner he is not entitled to the relief under Section 17-B since the only consequence of his having entered into the employment of the petitioner Company by playing fraud was that no relationship of employer-employee ever came into existence between the parties. The learned senior counsel for the petitioner placed reliance on a judgment of the Hon'ble Supreme Court reported as "***R. Vishwanatha Pillai Vs. State of Kerala & Others with Vimal Ghosh Vs. State of Kerala & Others***": (2004) 2 SCC 105 in support of the submission that employment obtained by someone by producing fake and forged documents is no employment in law and so the respondent had disentitled himself from claiming any benefit flowing from a genuine contract of employment

under the industrial law of the land. It was also contended that even otherwise the claim of the respondent-workman that he was unemployed is not acceptable and it has to be inferred by this Court that he was employed or at least was having handsome income to support himself and his family since he had failed to file his affidavit, as was directed by this Court to be filed by him vide order dated 13<sup>th</sup> January, 2011, showing details of his bank accounts and whether he was living in his own house or rented house.

4. On the other hand, Mr. Anuj Aggarwal, learned counsel for the respondent-workman vehemently argued that the submissions made from the side of the petitioner have no relevance as far as the entitlement of the respondent-workman under Section 17-B of the Act is concerned since it is now too well settled that all that an industrial workman is to show before the superior court where his employer challenges the award of an industrial adjudicator holding the termination of his services to be illegal and directing his reinstatement in service is that he was not gainfully employed in any industrial establishment and once the superior Court is satisfied about that claim of the workman then there is no option for the Court but to direct the employer to make non-refundable payment to the workman of his last drawn wages and in fact even more than the last drawn wages can also be ordered to be paid by the employer. In support of this submission learned counsel placed reliance on the judgment of the Supreme Court in ***“Dena Bank Vs. Ghanshyam”***: (2001) 5 SCC 169. It was also contended that the merits of the challenge of the employer to the award of the industrial adjudicator are not to be

gone into at all by the superior Court while disposing of an application under Section 17-B of the Act and if that is done and on a prima facie view of the employer's case the relief of wages under Section 17-B of the Act, which is in the nature of a subsistence allowance to the successful workman, is denied to the workman then the whole purpose of having this kind of provision in the Industrial Disputes Act would be rendered nugatory and more particularly in the present case where the labour Court has even after holding the termination of the services of the respondent to be unjustified has denied him back wages totally and the success of the workman will remain there only on paper. Not only that, he would have to starve during this litigation. Regarding the non-filing of the additional affidavit by the respondent-workman as was directed to be filed by this Court counsel contended that even though the same was not filed but that was unintentional. He also showed a copy of one passbook of the respondent's bank account showing negligible balance.

5. After having considered the rival submissions I am of the view that this application of the respondent – workman deserves to be allowed. As far as the petitioner's objection that this application needs to be rejected because of it having been filed belatedly is concerned the same is liable to be rejected in view of the judgment dated 29.7.2008 of a Division Bench of this Court in LPA No.392/2008, "***Delhi Transport Corporation vs. Inderjeet Singh***" wherein the Division Bench had rejected similar objection raised on behalf of the employer and had granted the relief under Section 17-B to the workman from the date of the passing of the Award even though the application was filed quite belatedly. The other

objection raised by the petitioner – management on the merits of its case is also liable to be rejected for the reason that this Court has been consistently holding in different judgments that merits of the employer’s challenge to the Award of the Industrial Adjudicator directing reinstatement of the workman in service are not to be gone into while considering an application under Section 17-B of the Act. That is a matter to be considered when the writ petition is to be disposed of. There is no doubt that the respondent – workman had failed to file an affidavit disclosing his bank accounts etc. as he was directed to file by this Court but in my view that fact also cannot disentitle him from getting the relief under Section 17-B in view of the fact that in his application itself he had stated that he was dependent upon the income of his children while claiming that he himself was unemployed. During the course of hearing on this application counsel for the respondent – workman had in case produced a passbook of his bank account with Bank of Baroda in which the balance amount credit was less than ₹2000. Even otherwise I am of the view that no adverse inference can be raised against the respondent – workman because of his not filing the affidavit as directed by this Court in view of the fact that in a judgment of a Division Bench of this Court it has been held that no such direction could be given to a workman at the time of disposal of the application under Section 17-B. That decision was given on 25<sup>th</sup> April, 2011 in *LPA 378/11, “S.K. Mitra vs. Assistant General Manager, State Bank of India”* which was an appeal against the order of the Single Judge Bench of this Court giving a similar direction to the workman involved in that case for disclosing his source of income etc. The workman had challenged that direction in

appeal and the Division Bench had set aside that direction by observing that such a roving enquiry is unwarranted.

6. This application is accordingly allowed. The petitioner – management is directed to pay to the respondent either his last drawn wages or the minimum wages fixed by the competent authority from time to time, whichever are higher, from the date of the impugned Award till the disposal of this writ petition. However, before that is done, respondent – workman shall give a written undertaking that he shall refund to the petitioner – management any amount which may be found to have been received by him in excess of his entitlement under Section 17-B, in the event of petitioner – management succeeding in his writ petition, within four weeks from the date of final judgment of this Court. In case the undertaking is not furnished, the petitioner’s liability shall be only to pay him his last drawn wages. In case the undertaking is furnished the petitioner – management shall clear the arrears from the date of impugned Award till April, 2012 within four weeks and shall continue to pay monthly wages till final disposal of the writ petition on or before 10<sup>th</sup> day of each succeeding month.

**P.K. BHASIN, J**

**April 11, 2012**