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

+ **LPA No.165 of 2012, LPA No.345 of 2012 & LPA No.342 of 2012**

Reserved on: 23rd July, 2012
% Pronounced on: 24th August, 2012

1) LPA No.165 of 2012

MUNICIPAL CORPORATION OF DELHI . . . Appellant
through : Mr. Gaurang Kanth, Advocate.

VERSUS

SANTOSH KUMARI & ANR. . . .Respondent
through: Mr. Anuj Aggarwal, Advocate

2) LPA No.345 of 2012

GAIL (INDIA) LTD. . . . Appellant
through : Mr. Aman Lekhi, Sr. Advocate with Mr. Sanjeev Sagar, Advocate.

VERSUS

TARKESHWAR PRASAD KHARAWAR . . .Respondent
through: Mr. Anuj Aggarwal, Advocate

3) LPA No.342 of 2012

MANAGEMENT OF INTERNATIONAL STUDENTS HOUSE . . . Appellant
through : Mr. Pawan Kumar Agarwal, Advocate.

VERSUS

FAKRUDDIN FAROOQUI . . .Respondent

through: Ms. Jyoti Dutt Sharma, Advocate

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI (Acting Chief Justice)

1. The legal issue raised in all these appeals is common, though the facts in each of the appeals would be different. Having regard to the commonality of the legal issue, these appeals are being disposed of by this common judgment. Of course, after stating the position of law, we would be taking each appeal of decision on the application of principle of law to the facts of each of the appeal.

2. The question touches upon the interpretation that is to be given under Section 17B of the Industrial Disputes Act (hereinafter referred to as 'the ID Act'). To put it in precise, the issue is as to whether the order of payment of wages under Section 17B of the ID Act should be from the date of the award or from the date of filing of the application under Section 17B of the ID Act by the concerned workman or there could be any other date, like the date of filing the writ petition, etc. We would first like to reproduce the facts of each of the appeal.

LPA No.165/2012

3. The appellant in this case is the Municipal Corporation of Delhi with whom the Respondent No.1 was engaged as part-time Safai Karamchari with effect from 01.7.1975. She was engaged for cleanliness of the Terminal Tax Post at Nizampur and her duty was

only for half an hour a day in the morning, as she was only required to clean the terminal tax post at Nizampur. The said terminal tax post was abolished from Delhi with effect from 31.1.1993 which resulted into termination from service of the workman as well. The workman raised industrial dispute, which was referred to the Industrial Tribunal for adjudication with the following terms of reference:

> "Whether the services of Smt. Santosh Kumari (part-time Safai Karamchari) have been terminated illegally and/or unjustifiably by the management and if so, to what relief is she entitled and what directions are necessary in this respect?"

4. Both the parties filed their respective pleadings and led their respective evidences. On the basis of the said evidence, the learned Tribunal was pleased to pass the award dated 03.11.2001 with the following observations:

> "In view of my above discussion as since I have already been held that action of the management in termination the services of the claimant is illegal as no notice pay and retrenchment compensation has been paid and that other employees of the Terminal Tax Department have been absorbed by MCD in its other departments, so present claimant Smt. Santosh Kumar is also entitled to be absorbed by the MCD in any of its other Department will all consequential benefits. Award is passed accordingly……."

5. The appellant-management challenged the said award dated 03.11.2001 before the learned Single Judge by filing Writ Petition (C) No.9789/2006 titled ***MCD Vs. Santosh Kumari & Anr.*** The respondent workman herein after four and a half years of the filing of writ petition on 22.11.2010 filed an application under Section

17B of the ID Act (CM No.20328/2010) claiming that after her termination, she was not gainfully employed anywhere and hence entitled for the 17B payment.

6. After hearing the parties, the learned Single Judge vide orders dated 30.11.2011 allowed the said CM and directed the appellant to pay to the workman last drawn wages or the minimum wages which ever are higher from the date of passing the award. Being aggrieved by the said orders dated 30.11.2011, the appellant filed a review petition (Review Petition No.34/2012) praying, *inter alia*, from restricting the 17B payment from the date of order of the learned Single Judge, i.e., 30.11.2011. The learned Single Judge vide orders dated 16.1.2012 dismissed the said review petition with a cost of `10,000/-.

7. It is in these circumstances, challenging the orders dated 30.11.2011 directing payment of wages from the date of the award, and not from the date of the order as claimed by the appellant, the present appeal is preferred.

LPA No.342/2012

8. The appellant in this case is the Management of International Students House, University of Delhi. The respondent (hereinafter referred to as 'the workman) was working with the management as a Security Guard since January, 1995 whose services were terminated allegedly with effect from 31.5.1997 by way of refusal of duties. He raised industrial dispute which was referred to the Labour Court

No.-III, Karkardooma Courts, Delhi with the following terms of reference:

> "Whether the services of Shri Fakruddin Farooqui have been terminated illegally and/or unjustifiably by the management, and if so to what relief is he entitled and what directions are necessary in this respect?"

9. After adjudication, the Labour Court passed the award dated 01.2.2003 holding termination of the workman to be illegal and unjustified as it was in violation of provisions of Section 25F of the ID Act as well as *principles of natural justice*. The Labour Court, thus, rendered the award directing reinstatement of the workman in service with 50% of backwages.

10. Challenging this award, the appellant has filed the writ petition which was filed on 09.9.2003. Show cause notice in this writ petition was issued on 12.9.2003. Workman was served who filed his reply/counter affidavit on 26.10.2004. Thereafter, matter was heard and Rule was issued on 12.11.2007. The workman, however, field application under Section 17B of the ID Act on 21.5.2010. Orders dated 21.3.2012 have been passed by the learned Single Judge directing the appellant to pay him either his last drawn wages or the minimum wages fixed by the competent authority from time to time, whichever is higher, from the date of the impugned award till the disposal of the writ petition. The appellant was also directed to clear the arrears within four weeks and in case of delay, the appellant shall also become liable to pay interest @ 10% per annum.

11. Again challenging that order, the contention of the appellant in the present appeal is that the direction to pay the wages under Section

17B of the Act should have been from the date of application filed under Section 17B of the Act, i.e., 21.5.2010 and not from the award, i.e., 30.6.2003, as directed by the learned Single Judge.

LPA No.345/2012

12. The respondent-workman was appointed with the appellant GAIL (India) Ltd. as Attendant Grade III against the post reserved for Scheduled Tribe with effect from 27.11.1989. His name was sponsored by the Employment Exchange, New Delhi and was allowed to join the appellant provisionally subject to verification of C & A and Caste Certificate submitted by him at the time of joining in terms of Ministry of Home Affairs vide OM No.42/34/52-NGS dated 17.4.1953. The copy of Caste Certificate No.116 dated 11.9.1979 submitted by the respondent issued by the Office of District Magistrate, District Siwan, Bihar was forwarded for verification vide appellant's letter dated 19.3.1993 to the District Magistrate, Siwan, Bihar. District Magistrate, Siwan vide his letter dated 13.7.1993 informed that the Caste Certificate No.116 dated 11.9.1979 submitted by the workman is totally forged including signature and seal. The workman on being informed that the Certificate No.116 dated 11.9.1979 was forged, requested for an opportunity to produce a fresh Caste Certificate issued by the Competent Authority. The workman then submitted another Certificate No.776 dated 30.8.1994 issued by the Sub-Divisional Officer, Siwan, Bihar. This certificate was also sent on 09.12.1994 to the Sub-Divisional Magistrate's Office, Siwan for verification. In

reply, SDM, Siwan vide letter dated 20.12.1994 informed that the Certificate No.779 is false and fabricated. Further, another letter dated 08.3.1995 purported to have been issued by SDO, Siwan was received by the appellant along with an application of one one Shri Neeraj Prasad claiming to be the brother of the workman. On verification, this letter of 08.3.1995 was also found to be false as confirmed by the SDM, Siwan vide letter No.351/C dated 24.5.1995. Later, the Vigilance Officer of the appellant met the District Magistrate and SDM, Siwan, Bihar and confirmed that the Caste Certificate submitted by the workman was not issued by their offices.

13. Thereafter, the Disciplinary Authority ordered for holding an inquiry against the workman for submitting false caste certificate in accordance with GAIL Employees' (Conduct, Discipline and Appeal) Rules vide Memorandum dated 29.8.1995. Since the workman denied the charges, the Disciplinary Authority then vide his order dated 06.10.1995 appointed an Inquiry Officer and a Presiding Officer for conducting the inquiries as per GAIL Employees' (Conduct, Discipline & Appeal) Rules, 1986.

14. The inquiry was conducted and the Inquiry Officer returned the finding holding that the charge was proved. On that basis, the Disciplinary Authority awarded the penalty of dismissal from service upon the workman. His statutory appeal was also dismissed by the Appellate Authority. Thereafter, he raised industrial dispute under Section 17B of the ID Act, which was referred to the Labour Court with following terms:

> "Whether dismissing the services of Sh. Tarkeshwar Prasad Kharwar by the Gas Authority of India is legal and justified? If not, to what relief is the workman entitled."

15. The Labour Court, after adjudication, passed the award dated 22.11.2005 holding that the workman belongs to Kharwar Caste, which was Scheduled Tribe in view of the Notification of 1956 issued by the Government of India, Ministry of Home Affairs. It, thus, held that since the workman belongs to Scheduled Tribe, he was rightly appointed against the post reserved for this category and his services could not have been terminated. The award was accordingly given directing reinstatement of the workman with continuity of service, but without any backwages on the ground that it was the fault of the workman in not able to place the aforesaid Notification of 1956 before the appellant.

16. The appellant has challenged this award by filing Writ Petition (C) No.1929/2006. Four years after the filing of the writ petition, the workman moved application in December, 2010 under Section 17B of the ID Act. The learned Single Judge has allowed that application directing the appellant to pay backwages from the date of the award till the disposal of the writ petition.

17. From the factual matrix taken note of from all these appeals, it would transpire that the applications under Section 17B of the ID Act were filed by the concerned workmen much after the filing of the writ petitions. Since applications were filed immediately after service upon the workmen in the writ petitions preferred by the appellant-Management, the contention of the appellants is that the

order of backwages under Section 17B of the ID Act should not be from the date of award, but from the date of the application. In support of this plea, learned counsel for the appellants have made various submissions.

18. Before we take note of these submissions as well as rebuttal thereof given by Mr. Anuj Aggarwal and Ms. Jyoti Dutt Sharma, who appeared on behalf of the workmen in these appeals, we would like to reproduce Section 17B of the ID Act in order to take note of the plain language of this provision:

> "**17B. Payment of full wages to workman pending proceedings in higher courts -** Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such court:
>
> Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the court shall order that no wages shall be payable under this section for such period or part, as the case may be.
>
> (i) It is commenced or declared in contravention of section 22 or section 23; or

(ii) It is continued in contravention of an order made under sub-section (3) of section 10 or sub-section (4A) of section 10A.

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10 or sub-section (4A) of section 10A.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal."

19. This provision has repeatedly come up for interpretation in its various hues and facets before the High Courts as well as the Supreme Court. It may not be necessary to take note of all those judgments laying down the ratio and the various aspects which have been clarified in those judgments laying down certain specific principles. Since in these appeals, we are concerned with a limited issue, viz., the date from which the benefit under Section 17B of the ID Act is to be made available to the concerned workman, our discussion would revolve around this central issue. However, while considering an application under Section 17B of the ID Act, it is necessary to bear in mind that the spirit, intendment and object underlying the statutory provision of Section 17B is to mitigate and relieve, to a certain extent, the hardship resulting to a workman due to delay in the implementation of an award directing reinstatement of his services on account of the challenge made to it by the

employer. The preliminary consideration for making available such a relief to a workman is to be found in the benevolent purpose of the enactment. It recognizes a workman's right to a bare minimum to keep body and soul together when a challenge has been made to an Award directing his reinstatement. The statutory provisions provide no inherent right of assailing an order or an award by an industrial adjudicator by way of an appeal. The payment which is required to be made by the employer to the workman has been held to be akin to a subsistence allowance which is neither refundable nor recoverable from a workman even if the Award in favour of the workman is set aside by the High Court. In ***Dena Bank Vs. Kiriti Kumar T. Patel*** [(1999) 2 SCC 106], the Apex Court was of the view that the object under Section 17B of the ID Act is only to relieve to a certain extent, the hardship that is caused to the workman due to the delay in implementation of the Award.

20. Further, the statute requires satisfaction of the following conditions:

(i) An award by a Labour Court, Tribunal or National Tribunal directing reinstatement of a workman is assailed in proceedings in a High Court or the Supreme Court;

(ii) During the pendency of such proceedings, employer is required to pay full wages to the workman;

(iii) The wages stipulated under Section 17B are full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any Rule;

(iv) Such wages would be admissible only if the workman had not be employed in any establishment during such period and an affidavit had been filed to such effect.

21. A Single Bench of this Court in ***Food Craft Instt. Vs. Remeshwar Sharma and Anr.*** [(2007) 2 LLJ 350 Del] culled out the following principles, from various judicial pronouncements touching upon various facets for grant of interim relief under Section 17B of the ID Act, in the following manner:

> "(i) An application under Section 17B can be made only in proceedings wherein an industrial award directing reinstatement of the workman has been assailed.
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> (ii) This Court has no jurisdiction not to direct compliance with the provisions of Section 17B of the Industrial Disputes Act if all the other conditions precedent for passing an order in terms of the Section 17B of the Act are satisfied [Re : (1999) 9 SCC 229 entitled Choudhary Sharai v. Executive Engineer, Panchayati Raj Department & Anr.].
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> (iii) As the interim relief is being granted in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court can grant better benefits which may be more just and equitable on the facts of the case than the relief contemplated by Section 17B. Therefore, dehors the powers of the Court under Section 17B, the Court can pass an order directing payment of an amount higher than the last drawn wages to the workman [Re : (1999) 2 SCC 106 (para 22), Dena Bank v. Kirtikumar T. Patel].
>
> (iv) Such higher amount has to be considered necessary W.P(C) No.11803/2005 Page 6 of 11in the interest of justice and the workman must plead and make out a case that such an order is necessary in the facts of the case.

(v) The Court can enforce the spirit, intendment and purpose of legislation that the workman who is to get the wages from the date of the award till the challenge to the award is finally decided as per the statement of the objections and reasons of the Industrial Disputes(Amendment) Act, 1982 by which Section 17B was inserted in the Act [Re : JT 2001 (Suppl.1) SC 229, Dena Bank v. Ghanshyam (para 12)].

(vi) An application under Section 17B should be disposed of expeditiously and before disposal of the writ petition [Re : 2000 (9) SCC 534 entitled Workman v. Hindustan Vegetable Oil Corporation Ltd.].

(vii) Interim relief can be granted with effect from the date of the Award [Re : JT 2001 Supplementary (1) SC entitled Regional Authority, Dena Bank v. Ghanshyam; 2004 (3) AD (DELHI) 337 entitled Indra Perfumery Company v. Sudarshab Oberoi v. Presiding Officer].

(viii) Transient employment and self-employment would not be a bar to relief under Section 17B of the Industrial Disputes Act [Re : 2000 (1) LLJ 1012 entitled Taj Services Limited v. Industrial Tribunal; 1984 (4) SCC 635 entitled Rajinder Kumar Kundra v. Delhi Administration; 109 (2004) DLT 1 entitled M/s. Birdhi Chand Naunag Ram Jain v. P.O., Labour Court No. IV & Others].

(ix) The Court while considering an application under Section 17B of the ID Act cannot go into the merits of the case, the Court can only consider whether the requirements mentioned in Section 17B have been satisfied or not and, if it is so, then the Court has no option but to direct the employer to pass an order in terms of the statute. It would be immaterial as to whether the petitioner had a very good case on merits [Re : 2000 W.P(C) No.11803/2005 Page 7 of 11(5) AD Delhi 413 entitled Anil Jain v. Jagdish Chander].

(x) A reasonable standard for arriving at the conclusion of the quantum of a fair amount towards subsistence allowance payable to a workman would be the minimum wages notified by the statutory authorities under the provisions of the

Minimum Wages Act, 1948 in respect of an employee who may be performing the same or similar functions in scheduled employments. [Re: Rajinder Kumar Kundra v. Delhi Administration, (1984) 4 SCC 635; Sanjit Roy v. State of Rajasthan, AIR 1983 SC 328;decision dated 3rd January, 2003 in Writ Petition (Civil) Nos. 3654 & 3675/1999 entitled Delhi Council for Child Welfare v. Union of India; DTC v. The P.O., Labour Court No. 1, Delhi & Ors., 2002 II AD (Delhi) 112 (para 12, 13)]

(xi) Interim orders directing payment to a workman can be made even on the application of the management seeking stay of the operation and effect of the industrial Award and order. Such interim orders of stay sought by the employer can be granted unconditionally or made conditional subject to payment or deposits of the entire or portion of the awarded amount together with a direction to the petitioner employer to make payment of the wages at an appropriate rate to the workman. Such an order would be based on considerations of interests of justice when balancing equities.

(xii) For the same reason, I find that there is no prohibition in law to a direction by the Court to make an order directing payment of the wages with effect from the date of the Award. On the contrary, it has been so held in several judgments that this would be the proper course [Re : Regional Authority, Dena Bank & Anr. v. Ghanshyam, reported at JT 2001 (Suppl. 1) SC 229 and Indra Perfumery Co. Thr. Sudershab Oberoi v. Presiding Officer & Ors., 2004 III AD (Delhi) 337].

(xiii) While passing an interlocutory direction for payment of wages, the Court may also secure the interests of the W.P(C) No.11803/2005 Page 8 of 11employer by making orders regarding refund or recovery of the amount which is in excess of the last drawn wages in the event of the industrial award being set aside so as to do justice to the employer.

(xiv) A repayment to the employer could be secured by directing a workman to given an undertaking or offer security to the satisfaction of the Registrar (General) of the Court or

any other authority [Re : para 12, 2002 (61) DRJ 521 (DB), Hindustan Carbide Pvt. Ltd. v. Govt. of NCT of Delhi & Ors.(supra)]

(xv) In exercise of powers under Article 226 and Article 136 of the Constitution, if the requisites of Section 17B of the Industrial Disputes Act, 1947 are satisfied, no order can be passed denying the workman the benefit granted under the statutory provisions of Section 17B of the Industrial Disputes Act, 1947 [Re: 1999 (2) SCC 106, Dena Bank v. Kirtikumar T. Patel (para 23)].

(xvi) Gainful employment of the workman; unreasonable and unexplained delay in making the application by the workman after the filing of the petition challenging the award/order; offer by the employer to give employment to the workman would be a relevant factors and consideration for the date from which the wages are to be permitted.

(xvii)It will be in the interest of justice to ensure if the facts of the case so justify, that payment of the amount over and above the amount which could be directed to be paid under Section 17B to a workman, is ordered to be paid only on satisfaction of terms and conditions as would enable the employer to recover the same [para 13 of Regional Manager, Dena Bank v. Ghanshyam].

(xviii)The same principles would apply to any interim order in respect of a pendent lite payment in favour of the Workman." [emphasis supplied]

22. In respect of the issue, with which we are concerned, the learned Single Judge in the aforesaid judgment held that there was no prohibition in law to a direction by the Court to make an order directing payment of the wages with effect from the date of the Award. At the same time, it was also held that unreasonable and

unexplained delay in making the application by the workman after the filing of the petition challenging the award/order; offer by the employer to give employment to the workman would be a relevant factors and consideration for the date from which the wages are to be permitted. Following this judgment, another Single Judge of this Court in the case of ***Delhi Transport Corporation Vs. Sh. Ramesh Chander*** [W.P.(C) No.11803/2005, decided on 09.1.2008] granted the wages from the date of application and not from the date of award.

23. Learned counsel for the appellant also referred to the judgment of the Supreme Court in the case of ***Uttaranchal Forest Development Corpn. and Another Vs. K.B. Singh and Others*** [(2005) 11 SCC 449] directing entitlement for wages under Section 17B of the ID Act from the respective dates of filing the affidavit in compliance with Section 17B of the Act.

24. However, as pointed out above by Mr. Anuj Aggarwal that this judgment was considered by a Division Bench in ***Delhi Transport Corporation Vs. Inderjeet Singh*** (decided on 29.7.2008) holding that the aforesaid decision of the Supreme Court was a short order, which did not discuss other Supreme Court decisions. The Division Bench in this case also negated the contention that merely by filing delayed application, the workman should be given wages from the date of affidavit and not from the date of the Award. Following discussion contained in the said judgment was relied upon:

> "5. The decisions in Uttaranchal Forest Development Corporation as well as Raptakos Brett & Co. Limited are

short orders that do not discuss either of the above Supreme Court decisions. A reading of the orders would show that they were peculiar to the facts of those cases and did not alter the law as explained in Dena Bank-I and Dena Bank-II. As regards the date from which the amount under Section 17-B ID Act would become payable, the following passage in the decision in Dena Bank-II is a complete answer (SCC p.174):

> "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. We have also pointed out above that Section 17-B does not preclude the High Courts or this Court from granting better benefits - more just and equitable on the facts of a case than contemplated by that provision to a workman. By an interim order the High Court did not grant relief in terms of Section 17-B, nay, there is no reference to that section in the orders of the High Court, therefore, in this case the question of payment of full wages last drawn" to the respondent does not arise. In the light of the above discussion the power of the High Court to pass the impugned order cannot but be upheld so the respondent is entitled to his salary in terms of the said order."

6. 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 17B 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 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 under Section 17B ID Act had to be allowed."

25. We would like to remark at this stage that there are many judgments cited by both the parties in support of their submissions. However, in none of those judgments, issue arises directly for consideration. In some cases, without discussion, the benefit of Section 17B of the ID Act was given from the date of application/filing of the affidavit as required under Section 17B of the ID Act in some other cases, it was given from the date of award, again routinely and without discussing as to whether in a given case, it could be given from the later date and not from the date of award. In this backdrop, we have to give answer to the issue that has arisen.

26. We may record, at the outset, that normally such a benefit of payment under Section 17B of the ID Act is to be from the date of award which is not only the plain language of the provision, but so recorded in the objects and reasons for enacting this Section. Therefore, when the application is filed by the workman with promptitude after the receipt of the notice of the filing of the petition by the Management, he would be entitled to the benefit of Section 17B of the ID Act from the date of the award. Problem arises when such an application is not filed for years together and by filing a

belated application, still the claim is made from the date of the award, which is resisted by the management on the ground that it should be given, if at all, from the date of the application.

27. We are of the considered view that the Single Bench in ***Food Craft Instt. (supra)*** gave a balanced interpretation to the aforesaid provision taking into consideration the interest of both the workman as well as the employer. It is the most equitable. What follows from a conjoint reading of Para (xii) and (xvi) enumerated therein that normally, the workman would be paid wages with effect from the date of the award. It should be in those cases where application is filed with promptitude and immediately on notice of writ petition staying the operation of the order of reinstatement or proceedings against such an award. It should be within reasonable period. Thereafter, that would mean that such an application should normally be filed with the filing of the counter affidavit or reply to an application for interim relief and in the case of absence of such counter affidavit or reply, within the reasonable period from the date when workman has appeared himself or through counsel in the writ proceedings. This would be so even when the management has delayed in filing the writ petition challenging the award inasmuch as with such a delay, it cannot deprive the workman under Section 17B from the date of award. Thus, the expression "during the pendency of proceedings before the High Court" under Section 17B of the ID Act would not mean from the date of filing the writ petition. However, if there is a long or abnormal delay in filing application under Section 17B of the ID Act, we are of the opinion that in such

an eventuality, it becomes an obligation of the workman to satisfactorily explain the delay. It would become relevant consideration for deciding as to whether the benefit is to be accorded from the date of application or the award. In case, it is unreasonable and unexplained delay, it would be within the discretion of the writ Court to direct payment of wages from the date of the application. There could be several reasons for adopting this course of action. One of us (Rajiv Sahai Endlaw, J.) had taken the justification by providing following reasons:

> "12.3…….
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> A. Section 17B is in the nature of a subsistence allowance. It is intended to provide to the workman whose reinstatement has been directed by the Industrial Adjudicator, at least minimum wages, during the time that the judicial review of the award of the Industrial Adjudicator is pending consideration before this Court. The payment thereunder is a month by month payment and is not a payment of any lumpsum amount. Further, the said payment is subject to the workman, on affidavit, stating that he is unemployed and/or has been unable to find employment. The employer has a right to rebut the said averment of the workman and if succeeds in rebutting the same, the workman under Section 17B would not be entitled to payment.
>
> B. The payment under Section 17B is not an automatic payment which starts running immediately on institution of proceedings to challenge the award. For the workman to be entitled to such payment, he is required to file an affidavit. Thus, payment is dependent upon a positive act of the workman. The High Court is not empowered to make the payment till such affidavit has been filed by the workman.
>
> C. Once payment/order requires a positive act of the workman, entitled to such payment of filing in court such affidavit, the ordinary rule of litigation is (as reiterated in

Beg Raj Singh Vs. State of U.P. AIR 2003 SC 833) that the right to relief should be decided by reference to the date on which the party approaches the Court. The Supreme Court in Mukund Lal Bhandari Vs. U.O.I. AIR 1993 SC 2127, in relation to the pension of Freedom Fighters also held that the "benefit should flow only from the date of application and not from any date earlier". Thus but for Section 17B providing for payment during pendency of the writ proceeding (and which has been interpreted as not from date of institution of the writ petition but from the date of the award impugned therein) under general law, an order under Section 17B would have been only from the date of the application under Section 17B.

D. However such benefit given to the workman, of direction/order for payment from a date anterior to the filing of application should not be tilted against the employer by interpreting it to mean that the workman can apply under Section 17B at his whim and fancy and at any time. The workman cannot be permitted to apply under Section 17B when the writ petition matures for hearing and be held entitled to payment for several years together. To allow so, would be inequitable to the employer.

E. In most cases, it is impossible for the employer to verify whether the workman is employed in another establishment or not. It would be more so difficult if the employer is required to verify the employment, if any, for say the last 10 years, as the petitioner herein would be required to, to rebut the affidavit filed by the workman.

F. If the application under Section 17B is made within a reasonable time, the employer can make arrangements for the payment. However, non-filing of the application by the workman can reasonably entitle the employer to believe that the employee is employed in another establishment and will not make any claim under Section 17B. The employer may arrange its financial affairs accordingly. An employer who has acted on the basis of such a representation of the workman cannot after a long period, 10 years as in the present case, be burdened with the liability under Section 17B

> from a back date which as a lump sum may represent an enormous amount and wreck the employer. Moreover it will provide a bounty rather than subsistence.
>
> G. The Supreme Court in Excel Wear Vs. U.O.I. AIR 1979 SC 25 held that principles of socialism and social justice cannot be pushed to such an extreme so as to ignore completely or to a very large extent the interests of the employer."

28. We are quite in agreement with this approach. Applying this principle, we proceed to state the outcome in each of the appeal.

LPA No.165/2012

29. In this case, as noted above, Award was passed vide orders dated 03.11.2001. Writ petition was, however, filed in the year 2006, i.e., after five years from the date of the Award. The respondent workman also took four years in filing the application, which was filed only on 22.11.2010. However, if the wages are awarded from the date of the application, the management would get undue benefit of delay attributed to it in filing the writ petition. Therefore, in the facts of this case, we would not like to interfere with the discretion exercised by the learned Single Judge in granting pay to the workman.

30. This appeal is, accordingly, dismissed.

LPA No.342/2011

31. In this case, the Award was passed on 01.2.2003; writ petition was filed on 09.2.2003; workman filed the counter affidavit on 26.10.2004, but the application under Section 17B of the ID Act was

filed only on 21.5.2010. After filing the counter affidavit, matter was taken up for hearing on number of times. Rule was issue on 12.11.2007 and till that date, no such application came to be filed which was filed much after the issuance of even the Rule. No explanation is forthcoming for such a delay.

32. In this case, therefore, we are of the view that the workman should be allowed benefit of Section 17B of the ID Act only from the date of application, i.e., 21.5.2010 when the affidavit of non-employment was filed along with this application. This appeal is allowed and the order of the learned Single Judge is modified accordingly.

LPA No.345/2012

33. In the instant case, Award was passed on 22.11.2005. Writ is filed immediately thereafter in early, 2006. However, application under Section 17B was filed only in December, 2010 more than 4 ½ years of the filing of the writ petition. Again, this is a case where the wages should be awarded from the date of the application. However, in this case, Mr. Aman Lekhi, learned Senior Counsel argued that no order under Section 17B of the ID Act need to be passed at all. His submission was that jurisdiction under Article 226 is discretionary and not only the application was filed belatedly, but in this case, the respondent workman has played upon the management not only while seeking employment, but even when he filed application under Section 17B of the ID Act, he gave wrong address. It was further submitted that the workman is gainfully employed, i.e., self-employed. Insofar as plea that the workman

obtained employment on the basis of forged certificate, going into the same amounts to touching the awards or for that matter, writ petition which is not the scope of inquiry under Section 17B of the ID Act. No doubt, three caste certificates given by the workman and all are found to be forged. Notwithstanding, the Labour Court has given the award in favour of the workman on the ground that the workman actually belongs to Scheduled Tribe category. He was rightly appointed against the posts reserved for Scheduled Tribe and the services could not have been terminated. Commenting upon this approach of the learned Labour Court, while deciding the application under Section 17B of the ID Act would be going into the merits of the award and the same is impermissible.

34. Coming to the aspect of the gainful employment of the workman, we find that on the plea taken by the management that the respondent workman was self-employed and was earning in handsome income. Learned Single Judge passed the following orders date 13.01.2011:

> "Though process fee is not filed, the advocate on record of the petitioner accepts notice. The workman is directed to file copies his bank accounts since the date of passing of the award till date. The workman is also directed to file details of his residence from the date of the award till date as to whether he was living in a self-owned accommodation or in a rented accommodation. Necessary affidavit be filed within a period of four weeks from today. Reply to the application and the additional affidavit be filed within four weeks thereafter.
>
> List the CM for arguments on 3rd May, 2011."

35. It was followed by 03.5.2011. By this order, the workman was directed to file the bank accounts. When the matter came up for

hearing on 13.12.2011, the learned Single Judge noted that the workman had not complied with the order dated 13.1.2011 and more time was prayed by the counsel for the workman. This was specifically rejected, as no reason was given for non-compliance of the said order. The learned Single Judge directed that "application under Section 17B will be heard without all these details and of course, the fact of non-compliance of the aforesaid direction shall be considered after hearing the management's counsel and the workman's counsel and appropriate orders will be passed". In the impugned order, while allowing the application, the effect of non-filing of the affidavit in terms of order dated 13.1.2011 is stated as under:

> "5……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 25th 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."

36. It is clear from the above that insofar as application under Section 17B of the ID Act is concerned, it was filed more than 4 ½ years of filing of the writ petition. In view of our above mentioned detailed discussion, the workman can, at the most, be granted benefit of the wages under Section 17B of the ID Act from the date of filing the application. However, whether the workman be given even this benefit or not depends upon the outcome of the other plea raised by the appellant about the gainful employment of the workman. The provisions of Section 17B of the ID Act are very clear in this behalf and the legal position as set addressed in enough judgments, which is as follows:

Insofar as the workman is concerned, the only obligation put on him is to file an affidavit to the effect that he is not gainfully employed elsewhere. He does not have to prove anything else and the reason is obvious. No person can asked to give the proof of negative. Under Section 17B of the ID Act, it is an impossible for an employee to prove that he is not gainfully employed. Therefore, the moment such an affidavit is given by the employee, onus shifts upon the management contesting the application and intends to make out a case that the workman is not entitled to benefit of language under Section 17B of the ID Act because of this reason. An important question arises at this stage, viz., what kind of proof to show the gainful employment is to be furnished by the employer?

If there is a direct proof and evidence to show that the workman is under the employment of some other employer, and such proof is available with the employer and employer furnishes the same, that would be clinching. Difficulty, however, arises when clear-cut proof is not available with the employer, though some semblance of evidence is furnished, which would indicate that the workman is employed somewhere but to arrive at definite finding, some more reliable evidence is needed. We have come across the cases where photographs of such a workman working in some establishments are filed and even the particulars of the employer are given, but it is stated by the management that the said employer with whom the concerned workman is purportedly employed is not ready to furnish any proof of the employment. Situation gets more complicated when the management pleads self-employment. In such cases also, some proof of workman running some small scale business or other such activity is furnished in the form of photographs or the ownership of shop, etc. without any further evidence. Invariably, in all such cases, the management seeks proof against the employer where the workman is purportedly working at present to prove the records and state about the said employment. Managements, in case of self-employment, also press the Court at times to summon the final records in the form of sales tax registration, registration under Shops and Establishments Act, etc. to find out whether the workman is doing the business under the provisions of the said Act. Such moves are normally resisted on the ground that the Court cannot hold inquiries into the aforesaid aspects and to determine and collect

evidence on such aspects, viz., whether workman is working or not. Normally, such requests are rejected on the ground that the Court cannot hold inquiry once the workman has denied any gainful employment or self-employment.

37. We would like to point out at this stage that many cases have come across where workman initially doing any employment, but when confronted with some documentary evidence, they have accepted gainful employment. There is a tendency on the part of the workman to deny even when some semblance of evidence produced by the management which gives the indication some employment/self-employment.

38. No doubt, when the employer takes a vague plea that a workman is gainfully employed without furnishing any material or in support of this plea, the employer cannot take the help of the Court making the Court to undertake the exercise as to whether the workman is employed or not by indulging roving & fishing inquiry. We are of the view that interest of both the parties can be balanced by calling upon the workman to produce those documents, which are in exclusive possession of the workman and when the disclosure thereof is relevant to delineate the issue of gainful employment or self-employment. But it should be done only when the management produces some evidence in that behalf justifying further inquiry to know the truth. In such a situation, it would amount to finding the truth when on the one hand workman comes with complete denial and on the other hand, management has secured some evidence which may point towards the plausible/gainful employment. Such a

course is not to be resorted to on the *ipsi dixit* of the management as no fishing and roving inquiry is to be conducted by the Court.

39. This, therefore according to us, is the balanced approach which needs to be adopted by the Court, viz., it does not amount to become a proof or a tool for fishing and roving inquiry, but whether the cases so demand calling upon his workman to produce the evidence in his possession when on the basis of some evidence produced by the management, a doubt arises that workman may be employed and the affidavit filed by him may not be wholly correct.

40. Examining the present case in this respect, we find that the reply to the application under Section 17B of the ID Act, it was stated that the workman is staying in village and therefore, he may be having agricultural or farming activities or may be operating a shop. This plea was taken on the premise that since the workman had been dismissed from the service more than 15 years again without any income, it was not possible for him to raise his family. This was a bald plea taken without even the semblance of evidence to support the same. Though we do not entirely agree with the view of the learned Single Judge that in no case, there can be a direction to the workman to file bank accounts, etc. and such a general observation may not be correct having regard to what we have observed above, in the facts of this case, we are of the opinion that the appellant/management could not ask for filing the bank accounts, etc. unless it had furnished some evidence to show that the workman was self-employed either in agriculture activity or was running a shop. Therefore, in the facts of this case, we are of the view that the

learned Single Judge is right in holding that no adverse inference can drawn against the workman for not filing the affidavit.

41. Insofar as merits of the wages are concerned, viz., the plea of the management that the workman could not have been given any relief as he had secured the employment producing the forged certificate; that aspect touches the merits of the writ petition and cannot be gone into proceedings under Section 17B of the ID Act. We, thus, are of the opinion that the workman is entitled to wages under Section 17B of the ID Act. However, the same shall be payable from the date of filing the application under Section 17B of the ID Act, i.e., from December, 2010.

42. Appeal is partly allowed. Orders of the learned Single Judge are modified to this extent. Having regard to the nature of dispute, insofar as Award is concerned, we are of the opinion that it is a fit case where the matter be heard expeditiously on filing the application for early hearing. We expect the learned Single Judge to hear the writ petition at an early date.

43. There shall be no orders as to cost in any of these appeals.

ACTING CHIEF JUSTICE

(RAJIV SAHAI ENDLAW)
JUDGE

AUGUST 24, 2012
pmc