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

*Reserved on: 27.10.2025
Pronounced on: 06.01.2026*

+ W.P.(C) 1311/2007

STATE BANK OF INDIAPetitioner

Through: Mr.S.L. Gupta, Adv.

versus

KUNDAL LAL ARYARespondent
Through: Mr. Jitender Ratta, Ms. Anjana,
Advs.

CORAM:
HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT

RENU BHATNAGAR, J.

CM APPL. 20215/2018

1. This is an application filed on behalf of the respondent/workman under Section 17B of the Industrial Disputes Act, 1947(hereinafter referred to as, 'ID Act') read with Section 226 of the Constitution of India seeking direction to the petitioner/management to pay the respondent/workman his last drawn wages or minimum wages, whichever is higher, from the date of the Impugned Award dated 11.10.2006, *vide* Order dated 26.03.2007.

2. Briefly stated, the respondent/workman was employed by the



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petitioner bank as a peon on daily wages since June 1994, with a last drawn salary of Rs. 2550/- P.M. @ Rs. 85 per day. The respondent was terminated on 08.07.2002, which was alleged to be illegal and wrongful. Being aggrieved with his termination, the respondent initiated an industrial dispute, which led to the Impugned Award dated 11.10.2006 passed by the learned Labour Court directing the petitioner management to reinstate the respondent/workman on the same post with 50% back wages along with continuity of service and with all consequential benefits, within two months of the said Award. Aggrieved thereof, the petitioner had approached this Court by way of the captioned writ petition, wherein this court was pleased to stay the impugned award during the pendency of the captioned writ subject to the petitioner bank depositing 50% of the back wages due to the respondent/workman.

3. The learned counsel for the respondent/workman submits that since his termination, the respondent has remained unemployed and has not been able to secure any gainful employment despite his best efforts, an affidavit to this effect has also been filed. It is further submitted that the respondent/workman is facing significant financial hardship due to prolonged unemployment. He further submits that delay in filing the application by the respondent/workman was due to financial difficulties. He urges that directions be issued to the petitioner management to pay the respondent his last drawn wages or minimum wages, whichever is higher, in accordance with Section 17B



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of the ID Act.

4. *Per contra*, the learned counsel for the petitioner contends that in compliance with the Order dated 26.03.2007, the petitioner has already deposited 50% of the back wages, and as such there is no ground for grant of relief under Section 17B of the ID Act as claimed by the respondent. It is further submitted that the respondent/workman has filed the present application after an inordinate delay of 12 years.

5. The learned counsel for the respondent/workman, on instructions, with regard to the delay in filing the application submits that the respondent/workman is willing to accept the wages under Section 17B of the ID Act from the date of filing of the present application.

6. The learned counsel for the petitioner points out that the *interim* stay granted by this Court *vide* Order dated 26.03.2007 was made absolute by Order dated 01.09.2010 and, therefore, both of these Orders have attained finality and are binding upon the respondent. It is contended that after a lapse of 10 years and in the absence of any change in the circumstances, the respondent cannot seek a review of the said Order in the guise of the present application.

7. The learned counsel for the petitioner submits that the respondent was employed on a need basis as a casual labourer and was not a regular employee with the petitioner bank. He further submits that the Award itself notes the possibility of the respondent/workman being gainfully employed. It is further submitted that it is unbelievable



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that the respondent remained unemployed for a period of around 23 years after his termination on 08.07.2002.

8. Learned counsel for the petitioner further submits that the respondent was engaged merely as a daily wager with the petitioner bank and was being paid a sum of Rs. 85 per day. It is contended that there never existed an employer-employee relationship between the parties. The petitioner has no contact with the respondent workman and, therefore, neither possesses knowledge nor has the means to ascertain whether the respondent is presently gainfully employed.

9. In rebuttal, the learned counsel for the respondent contends that the respondent was not gainfully employed during the relevant period and an affidavit to this effect has already been filed by him.

10. Learned counsel further submits that, as per the affidavit filed by the respondent workman along with the present application, his age was 55 years at the time of filing the application on 07.05.2018. Since the age of superannuation in the petitioner bank is 60 years, the respondent workman would be deemed to have superannuated in the year 2023 and, consequently, is not entitled to the benefit of Section 17B of the Industrial Disputes Act, 1947, beyond the date of his superannuation.

11. As regards the age of the respondent, learned counsel fairly concedes that the respondent workman was 55 years of age at the time of filing the present application and would be deemed to have superannuated in the year 2023. Learned counsel, therefore, confines



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the respondent's claim to the wages due from the date of filing the present application till the date of his superannuation.

12. He further submits that the onus now lies with the management to plead and prove that the respondent was gainfully employed during this period. In support of his contentions, the learned counsel for the respondent has relied upon the judgment passed by the Division Bench of this Court in the *Sh. Surjeet Singh v. Dominant Systems Pvt. Limited* 2023SCC OnLine Del 1999.

13. I have heard the submissions of the learned counsel for the parties and perused the records.

14. In *Surjeet Singh (supra)*, the Division Bench of this Court, dealing with a similar situation, held that once an affidavit is filed by the workman/respondent, the burden shifts upon the management to prove that the workman was gainfully employed. The relevant paragraphs of the said Judgement read as under:

“10. A perusal of the aforesaid provision indicates that the provision was enacted to protect the worker, who has obtained an award of reinstatement in his favour, and the award has been impugned by the employer before the High Court or the Hon'ble Supreme Court. The provision offers protection to the worker by enabling the grant of full wages by the employer during the pendency of such proceedings, if the worker is unemployed during the said period. The main provision is worded in an unambiguous manner and contains the word “shall” to indicate the grant of wages. Moreover, the burden upon the worker to show the fact of his unemployment could be discharged by giving an affidavit to



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that effect. However, it does not mean that the provision lays down an absolute rule in favour of the worker. The proviso which follows the provision, shifts the ball in the court of the employer and provides it an opportunity to prove that the worker was gainfully employed during the period of proceedings. The burden to rebut the worker's affidavit falls upon the employer.

11. *One may rightly note that the legislature has created a clear distinction between the burden falling upon the worker and the employer. Whereas, the burden on the worker gets discharged by filing of an affidavit, the burden on the employer is two-fold -*

- i. To establish to the satisfaction of the Court that the worker was actually employed; and*
- ii. That the worker was receiving "adequate remuneration" for such work."*

15. In the instant case, the respondent/workman has already filed an affidavit stating that he was not gainfully employed during the relevant period.

16. On the other hand, the petitioner, despite opportunities, has failed to produce any evidence to show that the respondent/workman was gainfully employed or receiving adequate remuneration during the pendency of these proceedings. In absence of such evidence, the respondent/workman is entitled to the benefits of the interim protection under Section 17 (B) of the ID Act.

17. Further, in ***Food Craft Institute v. Rameshwar Sharma & Anr.***, 2006 SCC OnLine Del 505, a Co-ordinate Bench of this Court examined various judicial pronouncements dealing with different



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aspects of grant of interim relief under Section 17B of the Industrial Disputes Act. From these authorities, the Court culled out and crystallized certain governing principles relating to the scope and application of Section 17B, which are reproduced hereinafter:

"The principles laid down in the various judicial pronouncements noticed above for grant of interim relief to a workman can be culled out thus:

- (i) *An application under Section 17B can be made only in proceedings wherein an industrial award directing reinstatement of the workman has been assailed.*
- (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].*
- (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 in the interest of*



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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, intent 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 Workmanv. 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 Birdhi Chand Naunag Ram Jain v. P.O., Labour Court No. IV].*
- (ix) *The Court while considering an application under Section 17B of the*



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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 (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, (1983) 1 SCC 525 : 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, 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*



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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 v. Ghanshyam, JT 2001 (Suppl. 1) SC 229 and Indra Perfumery Co. Thr. Sudershab Oberoi v. Presiding Officer, 2004 III AD (Delhi) 337].*
- (xiii) *While passing an interlocutory direction for payment of wages, the Court may also secure the interests of the employer 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 give 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 (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 pendentelite payment in favour of the workman.*

(Emphasis supplied)

18. Accordingly, it is suffice to state that the Court is required to pass an order under Section 17B of the ID Act, provided all the conditions precedent for passing an order under Section 17B of the ID Act are satisfied. The application under Section 17B of the ID Act is required to be decided prior to the disposal of the writ petition. While passing such an order, it is immaterial whether the petitioner had a



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very good case on merits, as was pleaded by the petitioner before this Court. In the instant case, the workman has established that he was not gainfully employed during the relevant period from the passing of the award till the filing of the application, and the said claim of the workman could not be rebutted by the petitioner.

19. In view of the above principles as culled out from the different pronouncements, as well as the submission of the learned counsel for the respondent/workman that although, the respondent/workman is claiming last drawn wages/minimum wages from the date of the award but in absence of any plausible reasons or explanations for the inordinate delay of 12 years in filing of the present application and the respondent being superannuated in the year 2023, after attaining the age of 60 years, the respondent only presses for the grant of relief from the date of filing of the application till time of his deemed superannuation, it is, therefore, held that the respondent/workman is entitled to receive payment of last drawn wages or the minimum wages, whichever is higher from the date of filing of application, till the date of his superannuation, in accordance with the provisions of Section 17B of the ID Act.

20. The arrears of wages at this rate shall be paid to the respondent/workman within a period of six weeks from today. The monthly remuneration shall be paid to the respondent/workman, on or before the 7th of each month by the petitioner/management.

21. The application is disposed of in the above terms.



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22. List for consideration before the concerned Roster Bench on 25th February, 2026.

RENU BHATNAGAR, J

JANUARY 6, 2026

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