

**D.T.C. Vs. Prem Singh and ors.**

**D.T.C. Vs. Prem Singh and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/1163782](http://sooperkanoon.com/1163782)

**Court :** Delhi

**Decided On :** Sep-04-2014

**Judge :** Vibhu Bakhru

**Appellant :** D.T.C.

**Respondent :** Prem Singh and ors.

**Judgement :**

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

04. 09.2014 C.M. No.5914/2014 in W.P.(C) 4703/2003 D.T.C. .... Petitioner versus PREM SINGH & ORS. .... Respondents Advocates who appeared in this case: For the Petitioner For the Respondents : Ms Saroj Bidawat. : Mr Shyam Moorjani and Mr Shantanu Bhardwaj for R-2. AND + C.M. No.10789/2013 in W.P.(C) 18152/2006 MOOLCHAND KHAIRATI RAM HOSPITAL & AYURVEDIC RESEARCH INSTITUTE .... Petitioner versus GOVT OF NCT & ANR .... Respondents Advocates who appeared in this case: For the Petitioner : Mr Raj Birbal, Sr. Advocate with Ms Raavi Birbal with Mr Abhishek Bhardwaj. For the Respondents : Mr Shyam Moorjani and Mr Shantanu Bhardwaj for R-2. CORAM:HONBLE MR JUSTICE VIBHU BAKHRU

**JUDGMENT**

VIBHU BAKHRU, J C.M. No.10789/2013 in W.P.(C) 18152/2006 1. This application has been filed by respondent no.2 (workman), inter alia, praying that

the above captioned writ petition be dismissed as the petitioner has failed and neglected to pay the wages as directed by this Court by an order dated 04.03.2010. The petitioners letter dated 02.04.2012 annexed to the present application indicates that the petitioner has stopped paying the wages under Section 17B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) for the reason that respondent no.2 attained the age of 58 years on 12.04.2012, which is the age of superannuation/retirement under the General Service Rules of Employment. C.M. No.5914/2014 in W.P.(C) 4703/2003 2. This is an application filed by the petitioner seeking a clarification that respondent (workman) is not entitled to any payment under Section 17B of the Act after retirement.

3. As the issue involved in both the above applications (C.M. No.10789/2013 in W.P.(C) 18152/2006 and C.M. No.5914/2014 in W.P.(C) 4703/2003) is common, the applications were taken up for hearing together.

4. The limited controversy that arises in the present applications is whether the petitioner was obliged to continue making payments under Section 17B of the Act even after a workman has attained the age of Superannuation. Submissions 5. Mr Moorjani, the learned counsel for the workman relied upon the decision of a Single Judge of this Court in Management of Centaur Hotel v. P.S. Mohan Nair & Anr:

2011. (124) DRJ319 and the decision of the Supreme Court in Dena Bank v. Ghanshyam: (2001) 5 SCC169 in support of his contention that payment under Section 17B of the Act could not be restricted only up to the date of superannuation of the employee. He submitted that in view of the plain language of Section 17B of the Act, its operation could not be restricted only till the date of superannuation. It was contended that that was not open for the Courts to add words to a statute and reading the provisions of Section 17B to limit the liability of the employer only up to the date of superannuation of the worker would amount to adding the words or up to the date of superannuation in the said Section.

6. The learned counsel for the workman drew the attention of this Court to paragraph 15 of the decision in Management of Centaur Hotel (supra) wherein it was held that the language of widest amplitude had been used by the Legislature under Section 17B of the Act and the same could not be curtailed by limiting the

payment there under only till the age of superannuation, even though the proceedings remain pending in the High Court/Supreme Court.

7. It was further submitted that the Supreme Court in the case of Dena Bank (supra) had also unequivocally held that import of Section 17B of the Act admits no doubt that the 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 and that was in accord with the statement of objects and reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17B was inserted in the Act.

8. The learned counsel for the non-applicant (petitioner) contended that the question whether payments under Section 17B were to continue even beyond the date of superannuation of an employee was no longer *res integra* and the issue was clearly covered by a Division Bench of this Court in Delhi Transport Corporation v. Ramesh Chand: LPA No.89/2012 decided on 11.05.2012. The learned counsel further pointed out that another Division Bench of this Court had, following the decision in Ramesh Chand (supra), disposed of an appeal in the matter of Press Trust of India v. Saraswati: LPA5302012 by an order dated 11.12.2012 holding that the benefit under Section 17B of the Act would be available to the respondent therein only up to the date on which the respondent would have superannuated had she been in service. The learned counsel for the nonapplicant also relied upon the decisions of the Bombay High Court in Hind Rectifiers Limited v. Presiding Officer:

2001. (1) BomCR543 and a decision of the Single Judge of the Calcutta High Court in Hooghly Printing Co. Ltd. v. State of West Bengal: (2004) 3 LLJ499Cal. wherein it was held that the provisions of Section 17B cannot be read to provide for payments beyond the period of superannuation of the employee. The learned counsel for the petitioner further pointed out that the decision of a Single Bench of this Court in Management of Centaur Hotel (supra) had been set aside by the Division Bench by an order dated 26.09.2011 in LPA6652011.

9. The learned counsel for the applicant submitted that the decision of the Division Benches of this Court in LPA89of 2012 and other connected appeals decided on 11.05.2012 and LPA No.530/2012 decided on 11.12.2012 were without any

discussion as to the interpretation of Section 17B of the Act and thus, could not be considered as a precedent for deciding the issue involved in the present applications. He further submitted that both the said decisions had not referred to the decision of the Supreme Court in Dena Bank (supra) and as such the said decisions were per incuriam. Analysis and Conclusion 10. Section 17B was introduced in the Act by virtue of the Industrial Disputes (Amendment) Act, 1982 and reads as under:

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.

11. The objects and reasons for enacting the said provision was articulated as under:

when labour courts passed award of reinstatement, these are often contested by an employer in the Supreme Court or High Courts. It was felt that the delay in the implementation of the award caused hardship to the workman concerned. It was, therefore, proposed to provide the payment of the wages last drawn by the workman concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court /High Court.

12. It is apparent from the above that Section 17B was introduced for the purposes of mitigating the hardship faced by workman who had been reinstated but the reinstatement had been delayed on account of the contest laid by the employer

before the High Court or the Supreme Court. It is also clear that Section 17B proposed to provide "payment of wages last drawn". Plainly, the object of introducing Section 17B was to ensure that a workman, in whose favour an award for reinstatement has been passed, is at least paid his last drawn wages. Incontestably, the purpose of introducing Section 17B in the Act, is not to provide for a punitive measure or a disincentive for the employers to challenge the award passed by a Labour Court, but to mitigate the hardship faced by a workman on account of delays occasioned because of pendency of the petitions in the High Courts and the Supreme Court. The Parliament in its wisdom, obviously, thought it fit that a workman having succeeded in obtaining an award of reinstatement ought to be paid at least the last wages and allowances that were drawn by him. It was, therefore, also made a condition that for purposes of obtaining wages under Section 17B of the Act, the employee should not be gainfully employed elsewhere. This proviso to Section 17B also clearly indicates that the object was not to discourage an employer from challenging an award but to ensure that the workman who has prevailed before the labour courts does not suffer further for want of subsistence funds.

13. It is important to note that it is always open for an employer to implement the award by reinstating the workman and yet continue with his challenge to the award rendered by a Labour Court. If the argument of the workman is accepted, it would mean that even in cases where an employer has challenge the award and yet has reinstated the employee during the interregnum, he would, nonetheless, be obliged to pay the last drawn wages beyond the period of superannuation. This clearly would lead to an absurd situation that could have never been intended by the Legislature.

14. The reference to the obligation of the employer to pay "full wages last drawn" is clearly relatable to the relationship of an employer and an employee and is a direct consequence of the award which reinstates an employee in the service of an employer. Section 17B of the Act ensures that at least the last drawn wages and allowances are paid to the employee who has prevailed before the Labour Court and - as has been held by the Supreme Court in various decisions including *Ch. Saraiah v. Executive Engineer, Panchayat Raj Deptt.*,: (1999) 9 SCC229- the

Courts would have no jurisdiction to direct non-compliance of provisions of Section 17B of the Act, if the conditions therein are satisfied. Given the scheme of the statute, it would not be possible to accept that an employer would be liable to pay the wages even beyond the date of superannuation. This is so, because it would amount to imposing a liability on a employer to pay wages even in cases where, admittedly, the relations of an employer and employee has come to an end. The award passed by a Labour Court, reinstating a workman in the services of the employer, would work itself out in so far as the relationship of an employer and employee is concerned, with the superannuation of the workman from the services of the employer. The provisions of said Section 17B cannot be read outside the context of an employer and employee relationship.

15. In *Hind Rectifiers (supra)*, the Bombay High Court had referred to a decision of the Madras High Court in *Vardharajan Textile (P) Ltd. v. Labour Court*, wherein it had been held that the word wages was relatable to an employment and once the employment came to an end with superannuation of the employee, the question of any payment under Section 17B of the Act did not arise.

16. I respectfully disagree with the reasoning as contained in the reasoning as contained in *Management of Centaur Hotel (supra)* and espoused by the learned counsel for the workmen. The language of Section 17B of the Act is, undoubtedly, in wide terms yet the amplitude of Section 17B cannot be expanded beyond the sphere of employment. Section 17B of the Act operates within the width of an employee and employer relationship. Once the said relationship comes to an end, Section 17B of the Act would have no application. Concededly, the decision of this Court in *Management of Centaur Hotel (supra)* cannot be considered as a precedent as the same was set aside by a Division bench of this Court by an order dated 26.09.2111 in LPA No.665/2011.

17. The contention canvassed by the applicant that restricting the scope of Section 17B of the Act only till the date of superannuation of an employee would amount to adding words in the statute that are impermissible, also cannot be accepted. It is well settled that in interpreting a provision, the Court would read words in a statute, which are necessary to give effect to the language of the statute. It is well settled

that it is permissible to supply words to a statute where in absence of the same the existing language would be deprived of its meaning. If the words 'till the date of superannuation' are not read in the language of Section 17B of the Act, which obliges an employer to pay wages would be deprived of its meaning. As discussed earlier, wages is an aspect of employment. To read that wages would be payable, de hors the contract of employment would militate against the language of Section 17B of the Act.

18. It is also well settled that a court would read words in the language of a statute to give effect to the intention of the Legislature, which is apparent. In the case of *Union Bank of India v. Seppo Rally*: AIR 1999 SC62 The Supreme Court while interpreting Section 17 of the Consumer Protection Act, 1986 by virtue of which a State Commission for each State has been constituted, noticed that there was no proviso limiting the territorial jurisdiction of the State Commission. The Court held that the intention of the Parliament could not have been that disputes arising out of one State could be agitated by the State Commission of another State. Accordingly, the Supreme Court, applying the principle of purposive construction, read that the territorial jurisdiction of the State Commission was confined to the concerned State and suitable words were read into Section 17 of the Consumer Protection Act, 1986. In my view, this principle is equally applicable in the present case. The intention of the Legislature, as discussed earlier, is not to inflict any punishment on the employer for challenging an award but to ensure that the hardship suffered by an employee on account of his not being reinstated is mitigated to a certain extent. The object of Section 17B of the Act is not to confer on an employee a benefit which possibly, in certain cases could be more than he would have obtained in case the award in his favour was fully implemented.

19. The reliance placed by the learned counsel for workmen on the decision of the Supreme Court in *Dena Bank* (supra) is also misplaced. It is well settled that a decision is an authority for what it decides. In the present case, the issue whether the benefit of Section 17B of the Act would be available to an employee, even for the period after the superannuation, was not an issue in that case. However, paragraph 9 of the said decision may be relevant and relevant extract is as under:

9. The Statement of Objects and Reasons for inserting the said provision indicates that when Labour Courts pass awards of reinstatement, they are often contested by employers in the Supreme Court and High Courts. To mitigate the hardship that would be caused due to delay in implementation of the award, it was proposed to provide for payment of wages last drawn by the workman concerned from the date of the award till the dispute between the parties is finally decided in the High Courts or the Supreme Court. It follows that in the event of an employer not reinstating the workman and not seeking any interim relief in respect of the award directing reinstatement of the workman or in a case where the Court is not inclined to stay such award in toto the workman has two options, either to initiate proceedings to enforce the award or be content with receiving the full wages last drawn by him without prejudice to the result of the proceedings preferred by the employer against the award till he is reinstated or proceedings are terminated in his favour, whichever is earlier. ..

20. It is seen from the above, that the Court after referring to the statement of objects and reasons for introducing Section 17B of the Act indicated that in cases where an employee has obtained an award in his favour and in the event the employer does not reinstate the workman, the workman would have two options either to initiate proceedings for enforcing the award or to receive full wages last drawn in terms of Section 17B of the Act. It is also clear from the above that receiving wages under Section 17B of the Act is an alternative to enforcing the award in certain cases. Thus, in any event the decision of the Supreme Court cannot be read as providing the workman with an opportunity to receive wages for a period in excess of his term of employment. It is apparent that the Supreme Court was conscious that the benefits arising under Section 17B of the Act were clearly relatable to the employee being reinstated in services. Thus, the question of an employee claiming wages for a period beyond the date of superannuation cannot be contemplated.

21. I am also unable to agree that the decision of a Division Bench of this Court in Ramesh Chand (supra) would not be a binding precedent. The Court had recorded the contention canvassed on behalf of the workman, viz. that as per the plain language of Section 17B of the Act, the orders passed in such application would

enure to the benefit of workman till the pendency of the writ petition irrespective of the fact that an employee had attained the age of superannuation in the meantime and therefore, as to what was the age of retirement would be of no significance.

Apparently, this contention was rejected as it was held that workmen in these appeals shall be entitled to the benefit of Section 17B of the I.D Act till they attained the age of 58 years. The benefit of Section 17B orders passed in their cases shall be extended to them up to that date. In Press Trust of India (supra), a Division Bench of this Court had followed the decision in Ramesh Chand (supra) and ordered as under:

1. In the decision dated May 11, 2012, disposing of a batch of appeals, lead matter being LPA No.89/2012 DTC v. Ramesh Chand, a co-ordinate Division Bench of this Court held that pending disposal of a writ petition filed by the Management, the workman can be granted benefit of wages as per Section 17(b) of the I.D.Act 1947 only up to the age of superannuation and not beyond.

2. Nothing therefore needs to be decided by us compelling us to follow the law declared in the said decision since nothing has been brought out before us today to take a different view.

3. The appeal stands disposed of declaring that the benefit of the impugned order dated May 15, 2012 shall enure to the benefit of the respondent till she would have superannuated had she been in service and no more.

22. In my view, the decisions in Ramesh Chand (supra) and Press Trust of India (supra) are binding.

23. Accordingly, the application being C.M. No.10789/2013 in W.P.(C) 18152/2006 is dismissed and C.M. No.5914/2014 in W.P.(C) 4703/2003 is allowed. The parties are left to bear their own costs. VIBHU BAKHRU, J SEPTEMBER04 2014 RK

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**