



2026:DHC:1705



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5823/2012**

Reserved on: 18th February, 2026
Date of Decision: 26th February, 2026
Uploaded on: 26th February, 2026

JAMIA HAMDARD

.....Petitioner

Through: Mr. M. Zubair Hanifi, Adv.

versus

JOGINDER SINGH

.....Respondent

Through: Mr. P.K. Jha and Ms. Kittu
Bajaj, Adv.

CORAM:

HON'BLE MS. JUSTICE SHAIL JAIN

JUDGMENT

SHAIL JAIN, J.

C.M. APPL. NO. 9378/2025 in W.P.(C) 5823/2012

1. The present Application has been filed on behalf of the Respondent/Workman herein, under Section 17B of the Industrial Disputes Act, 1947 (hereinafter referred to as '*the Act*'), read with Article 226 of the Constitution of India, seeking a direction to the Petitioner/Management to pay the Respondent/Workman minimum wages as per the law for each month during the pendency of the present Writ Petition. The Respondent/ Workman has sought the following reliefs in the present Application.

A. Allow the present application of the applicant.



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B. Pass an order directing the Petitioner to make payment of wages as per law to the applicant by the management every month during the pendency of the Writ Petition.

C. Any other order as deem fit and proper as this Hon 'ble Court deems fit and proper.

BRIEF FACTS

2. The Respondent/Workman, Joginder Singh, was appointed as a Safai Karamchari on 01.06.1990 in the Faculty of Pharmacy of Jamia Hamdard University and was later confirmed and promoted as Peon with effect from 01.06.1992. His last drawn wages were Rs. 2,323/- per month. In October 1995, he proceeded on leave on account of illness and sought extensions up to 20.01.1996. Upon reporting for duty on 22.01.1996, he was allegedly not permitted to resume duties despite producing a medical certificate, and his services were subsequently terminated *vide* letter dated 30.10.1996 with effect from 26.04.1996. Aggrieved thereby, he raised an industrial dispute, which was referred by the Appropriate Government to the Labour Court. The Labour Court, *vide* Order dated 05.07.2011, held the domestic enquiry to be vitiated, and thereafter, by Award dated 07.02.2012, directed reinstatement with 50% back wages. The said Award has been challenged by the Petitioner/Management in the present Writ Petition, wherein the interim stay was granted on 17.09.2012, subject to the deposit of 50% back wages, and the interim order pertaining to stay of operation of the impugned Award was subsequently made absolute on 25.11.2013.



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3. During the pendency of the present Writ Petition, the Respondent/Workman has moved the present Application under Section 17B of the Act, claiming payment of full wages to the Respondent/Workman during the pendency of the Writ Petition.

SUBMISSIONS OF THE PARTIES

4. By way of the present Application supported by an Affidavit, learned Counsel for the Respondent/Workman submits that since his termination, the Respondent/Workman has remained unemployed and has been unable to secure any gainful employment despite his best efforts, resulting in significant financial hardship. It is further submitted that he is not employed anywhere and is sustaining himself through occasional and irregular menial work available in his native village in Himachal Pradesh, where he resides with his family members, and that he has no permanent source of income. Accordingly, it is prayed that this Court direct the Petitioner/Management to pay the Respondent/Workman wages in accordance with the law, in terms of Section 17B of the Act, during the pendency of the present Writ Petition.

5. Learned counsel for the Respondent/Workman further submits that pursuant to the Award being passed in his favour, the Respondent/Workman approached the Petitioner/Management on several occasions seeking reinstatement and release of the awarded dues; however, he was neither permitted to resume duties nor paid the amounts awarded. It is submitted that on each such occasion, he was informed that the Petitioner/Management had filed the present Writ



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Petition and that the operation of the Award had been stayed by this Court.

6. Learned Counsel for the Respondent/Workman also submits that after dismissal of the Writ Petition *vide* order dated 27.02.2022, the Respondent/Workman again approached the Management on 09.01.2023 and 20.02.2023, but was not allowed to join. Thereafter, he addressed written communications dated 09.01.2024 and 27.02.2024 seeking permission to resume duties; however, the same were not accepted, and no opportunity to rejoin was granted. In pursuance of the aforesaid, it is submitted that the Writ Petition was subsequently restored in the absence of the Respondent/Workman, resulting in continued non-implementation of the Award to his prejudice.

7. Per contra, learned counsel for the Petitioner/Management submits that the present Application under Section 17B of the Act, along with the supporting Affidavit, is misconceived and devoid of merit, having been filed with mala fide intent to exert monetary pressure upon the Petitioner/Management.

8. It is further submitted on behalf of the Petitioner/Management that the Respondent/Workman is aware that any amount paid under Section 17B of the Act is not recoverable even if the Writ Petition succeeds, and that the present Application has been moved only upon apprehension of an adverse outcome in the present proceedings.

9. Moreover, it is contended by the learned Counsel that the Application has been filed after an inordinate delay of nearly 13 years, and only after the conclusion of final arguments, and filing of written submissions, without any explanation for such delay. According to the



Petitioner/Management, the Application fails to satisfy the requirements of Section 17B of the Act, as no justification has been furnished for the belated filing.

10. Learned Counsel for the Petitioner/Management has placed reliance upon the judgments in *M/s Trends vs. Leelamma Thomas &Anr.*, wherein it has been held that -

"there is a delay of 3 years from the time when the writ petition was instituted in 2019, in filing Section 17B application. Even though a delay as such is not fatal in allowing in section 17B Application, it does reflect that there was no immediate financial hardship which was being faced by the worker". [...]

"the proviso to Section 17B of the Act gives allowances for the satisfaction of the court to not award relief under section 17B in case it is found that the worker had been employed or receiving adequate remuneration. This obviously is premised on a basic principle that there was no serious financial hardship faced by the respondent/worker".

11. Reliance has also sought to placed upon *Management of Municipal Corporation of Delhi vs. Bhanwar Singh* in support of the aforesaid submissions.

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

Moreover, it was held that



“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.”

12. Accordingly, it is prayed by learned Counsel for the Petitioner that the present Application shall be dismissed with costs and appropriate orders be passed in favour of the Petitioner/Management.

ISSUE INVOLVED

13. Having considered the submissions advanced in relation to the present Application, the issue that arises for consideration at this stage is *whether the Respondent/Workman is entitled to relief under Section 17B of the Act, independent of and without adjudicating upon the merits of the main Writ Petition.*

DISCUSSION/ DECISION

14. In the present context, before examining the principal issue in detail, it would be appropriate for this Court to consider the scope and ambit of the provisions embodied in Section 17B of the Act.



15. Section 17B of the Act is a beneficial provision enacted to provide monetary protection to a workman during the pendency of proceedings before the High Court or the Supreme Court challenging an award of reinstatement. The provision seeks to balance the employer's right to challenge an award with the workman's right to subsistence during the presumably prolonged litigation. The provisions of Section 17B of the Act read as under-

[17B. Payment of full wages to workman pending proceedings in the 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.]

16. Section 17B of the Act, accordingly, provides that where an award directing reinstatement of a workman is challenged in proceedings before a High Court or the Supreme Court, the employer



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shall be liable to pay such workman, during the pendency of such proceedings, full wages last drawn by him, provided the workman has not been employed in any establishment during such period and files an affidavit to that effect. If it is proved to the satisfaction of the Court that the workman has been employed and has been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable for such period or part.

17. In the case ***Management of Centaur Hotel v. P.S. Mohan Nair***, **2011 SCC OnLine Del 1861**, this Court has elucidated the nature and object of Section 17B of the Act and held that the provision was enacted to mitigate the hardship caused to a workman on account of non-implementation of an award of reinstatement during the pendency of proceedings before the High Court or the Supreme Court. It was observed that the benefit under Section 17B is intrinsically linked to the pendency of such proceedings and is not dependent upon the continued subsistence of an employer–employee relationship.

18. In line with the above, in ***Food Craft Institute v. Rameshwar Sharma &Anr.***, **2006 SCC OnLine Del 505**, a Co-ordinate Bench of this Court undertook an extensive examination of judicial precedents concerning the scope and grant of relief under Section 17B of the Act. The principles enunciated therein have since been relied upon by this Court in several subsequent decisions while adjudicating similar issues. Upon surveying the relevant authorities, the Court crystallised the governing principles delineating the ambit and application of Section 17B and held as under:



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A. An application under Section 17B of the Act is maintainable only where an award of reinstatement is under challenge, and once the statutory preconditions are satisfied, the Court ordinarily has no discretion to deny the benefit contemplated thereunder.

B. While exercising jurisdiction under Article 226 of the Constitution of India, the High Court may, in appropriate cases and on a proper pleading, grant an amount higher than the last drawn wages in the interest of justice, even with effect from the date of the Award, though the Court cannot examine the merits of the underlying dispute at this stage.

C. The relief is required to be considered expeditiously and before the final adjudication of the writ petition.

D. Transient or self-employment does not *ipso facto* disentitle a workman, though gainful employment, delay in moving the application, or an offer of employment by the employer are relevant considerations, particularly for determining the date from which wages are payable.

E. The quantum may be guided by notified minimum wages so as to ensure fair subsistence. At the same time, the Court may balance equities by imposing conditions, including directions for refund, undertakings or security, especially where amounts in excess of last drawn wages are ordered, so as to safeguard the interests of the employer in the event the award is ultimately set aside.



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F. These principles equally govern interim and pendente lite directions for payment in such matters.

19. Accordingly, it is sufficient to observe that this Court is obliged to consider and pass appropriate orders under Section 17B of the Act, subject to the fulfilment of the statutory prerequisites embodied therein. An application under Section 17B is required to be examined during the pendency of the writ petition and prior to its final adjudication. While determining such an application, the Court is not concerned with the merits of the challenge to the Award, and the tenability or strength of the Petitioner's case on merits is not a relevant consideration at this stage.

20. Now, on the point of burden of proof, once the workman files an affidavit asserting non-employment, the initial burden stands discharged. The onus then shifts to the employer to prove that the workman was gainfully employed and receiving adequate remuneration. Mere allegations are insufficient, and cogent material must be placed before the Court by the employer therein.

21. In this backdrop, it is pertinent to note that the Respondent/Workman has discharged the burden cast upon him by filing an affidavit stating that he has remained unemployed and has been unable to secure any gainful employment ever since his termination. He has further averred that he is not employed anywhere and is sustaining himself through occasional and irregular menial work in his native village in Himachal Pradesh. It thus follows that the Respondent/Workman has not been receiving adequate remuneration,



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which he would have earned had he continued in employment with the Petitioner/Management.

22. Upon such Affidavit being filed, the burden shifted to the Petitioner/Management to place material on record to demonstrate that the Respondent/Workman was gainfully employed and receiving adequate remuneration. However, the Petitioner/Management has failed to discharge the said burden and has not produced any cogent material to rebut the averments made by the Respondent/Workman.

23. In *Surjeet Singh v. Dominant Systems Pvt. Limited, 2023 SCC OnLine Del 1999*, the Division Bench of the Delhi High Court, while dealing with the scope and operation of Section 17B of the Industrial Disputes Act, 1947, reiterated the settled legal position that the filing of an affidavit by the workman asserting that he is not gainfully employed satisfies the initial statutory requirement. Upon such affidavit being placed on record, the burden shifts to the management to establish, by cogent and credible material, that the workman was, in fact, gainfully employed and receiving adequate remuneration during the relevant period. The relevant parts of the said Judgment 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 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.”*

24. Moreover, the aforesaid position was reiterated by a Co-ordinate bench of this Court in ***Raj Gariha Vishram Sadan v. Vijay Kate, 2006 SCC OnLine Del 1626***, wherein it clarified that Section 17B of the Act applies where an employer challenges an award of reinstatement before the High Court or Supreme Court, mandating payment of full last drawn wages, inclusive of maintenance allowance, during the pendency of such proceedings. The workman is required to file an affidavit stating that he is not gainfully employed, whereupon the burden shifts to the employer to prove, to the satisfaction of the Court, that the workman was in fact employed and receiving adequate remuneration during the relevant period.



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25. In the present case, the impugned Award was passed on 07.02.2012, and the present Writ Petition was filed in the year 2012. In furtherance, the Application under Section 17B of the Act was filed by the Respondent/Workman in the year 2025. The present Writ has been pending for a considerable period of 23 years now.

26. Contextually, it is reiterated that the Respondent/Workman has already filed an Affidavit stating that he was not gainfully employed during the relevant period. On the other hand, the Petitioner/Management 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 the absence of such evidence, the Respondent/Workman is entitled to the benefits of the interim protection under Section 17B of the Act.

27. Further, the Petitioner herein has not stated anything about the employment or unemployment of the Respondent/Workman. The Petitioner/Management has neither even alleged that the Respondent/Workman had been employed in any establishment during the pendency of the present Writ Petition nor made an attempt to prove that the Respondent/Workman had been employed during the pendency of the Writ Petition. In these circumstances, this Court does not find any reason or circumstance to disbelieve and reject the statement in the affidavit of the Respondent/Workman that he has not been employed in any establishment during the pendency of the Writ Petition. The workman has established that he was not gainfully employed during the relevant period by way of an Affidavit, from the passing of the Award till the filing of the Application, and the said



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claim of the Respondent/Workman has not been rebutted by the Petitioner/Management.

28. Additionally, while considering an application under Section 17B of the Act, the application has to be considered strictly in terms of Section 17B of the Act, irrespective of the merit of the case. This Court can only consider whether the requirements mentioned in Section 17B have been satisfied or not. If those requirements have been satisfied and if it has not been proved to the satisfaction of the Court that the workman has been employed and had been receiving adequate remuneration during the period of pendency of the writ petition, this Court has no option but to direct the employer to pay wages to the workman in terms of Section 17B irrespective of the merit of the writ petition.

29. In view of the aforesaid, this Court is of the view that the Respondent/Workman is entitled to the benefit under Section 17B of the Act, and the Petitioner/Management is liable to pay such benefits to the Respondent/Workman.

30. In the present case, all the requirements under Section 17B of the Act have been satisfied. Hence, the Respondent/Workman is entitled to the benefit granted under Section 17B of the Act. The Petitioner/Management is liable to discharge their liability under Section 17B. At the same time, this Court does not consider it necessary in the circumstances of this case or in the interest of justice to direct payment of a higher amount than what is stated in Section 17B of the Act.



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31. Lastly, on the point of unjustified delay of 13 years, although the Respondent/Workman is claiming minimum wages from the date of the impugned Award, but in absence of any plausible reasons or explanations for the inordinate delay of 13 years in filing of the present Application and the Respondent/Workman, approximately being 54 years of age and nearing the age of superannuation after attaining the age of 60 years, it is, therefore, held that the Respondent/Workman is entitled to receive payment of minimum wages from the date of filing of Application, till the disposal of the present Writ Petition, in accordance with the provisions of Section 17B of the Act.

32. Accordingly, the following directions are passed thereof:-

A. The Petitioner shall pay to the Applicant/Respondent/Workman monthly wages as per the Minimum Wages Act, 1948, from the date of the Application till the disposal of the present Writ Petition. The said amount shall be deposited within a period of three months from today, failing which the Petitioner/Management shall be liable to pay interest at the rate of 6% per annum on the outstanding amount, including the remaining arrears.

B. Further, the monthly remuneration, as per the Minimum Wages Act, 1948, shall be paid to the Respondent/Workman, on or before the 9th day of each month by the Petitioner/Management, till disposal of the present Writ Petition.

C. The payment of the aforesaid amount shall be subject to the Applicant/Respondent/Workman filing an affidavit within a



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period of two weeks, specifically affirming his continuous unemployment and that he had not been receiving adequate remuneration, from the date of filing the present Application till date.

33. The Application is disposed of in the aforesaid terms.

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34. The parties are directed to file their respective Written Submissions along with the Compilation of Judgments, if not already filed, within a period of four weeks from today, with an advance copy duly served upon the other side. Considering the long pendency of the present Writ Petition, no further opportunity shall be granted to any of the parties in this regard.

35. List the matter for final arguments on 20th April, 2026.

SHAIL JAIN, J

FEBRUARY 26, 2026

M.M.