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$~15/16/17

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

\+ LPA 148/2012

BRIJ MOHAN ..... Appellant
Through: Ms. Latika Chaudhary, Advs.

Versus

M/S FRUIT & VEGETABLE PROJECT ..... Respondent
Through: Mr. Raj Birbal, Sr. Adv. with Ms. Raavi Birbal, Adv.

AND

\+ LPA 150/2012

MOHAN SINGH ..... Appellant
Through: Ms. Latika Chaudhary, Advs.

Versus

M/S FRUIT & VEGETABLE PROJECT ..... Respondent
Through: Mr. Raj Birbal, Sr. Adv. with Ms. Raavi Birbal, Adv.

AND

\+ LPA 151/2012

PANKAJ KUMAR ..... Appellant
Through: Ms. Latika Chaudhary, Advs.

Versus

M/S FRUIT & VEGETABLE PROJECT ..... Respondent
Through: Mr. Raj Birbal, Sr. Adv. with Ms. Raavi Birbal, Adv.

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

ORDER

% **31.07.2012**

1. These appeals impugn separate but identical orders of the learned Single Judge dismissing the applications filed by the appellant workmen for enhancement of the wages being paid to them under Section 17B of the Industrial Disputes Act, 1947.

2. The respondent employer has filed the writ petitions impugning the awards of the Industrial Adjudicator directing reinstatement with 60% back wages of the appellant workmen. Vide interim orders in the writ petitions, the operation of the awards has been stayed. The appellant workmen applied under Section 17B of the Act and which applications were allowed with a direction to the respondent employer to pay last drawn wages / minimum wages whichever is higher to the appellant workmen. On the request of the respondent employer, the appellant workmen were also directed to, without prejudice to the rights and contentions of the parties, join duty with the respondent employer.

3. The appellant workmen filed applications for enhancement of 17B wages (supra) contending that in pursuance to the above, they were working with the respondent employer but the respondent employer was paying them last drawn wages only and not wages equivalent for the work being taken from them. Reliance in this regard was placed on the judgment dated

17.02.2010 in CM No.11188/2009 in W.P.(C) No.5183/2003, titled ***Delhi Transport Corporation Vs. Phool Singh***. The said application was opposed by the respondent employer.

4. The learned Single Judge dismissed the applications holding that the appellant workmen were employed on a fixed monthly salary for a fixed period which initially was for one year and then stood extended for a period of six months; that said daily wagers could not claim parity with regular employees and it was not so held in ***Phool Singh*** (supra) also. The operative part of the said order is as under:

> *"In my view there is no merit in this application. The applicant-workman was employed on a fixed monthly salary for a fixed period which initially was of one year and then stood extended for a period of six months, the judgment of this Court relief upon by the applicant-workman did not give the benefit of parity of pay between regular employees and those working on daily wage basis or fixed tenure basis on a fixed salary. Therefore, benefit of that judgment cannot be taken by the applicant-workman here. If he was really interested in getting a regular pay scale meant for the post of Assistant, he could have raised an industrial dispute about that entitlement which he never did. Therefore, the same very relief he cannot get in the manner which he is trying to get in these proceedings."*

5. The Industrial Adjudicator has held the termination of services of the appellant workmen to be illegal on technical grounds viz. non compliance of Section 2(oo)(bb) of the Act. Even if the appellant workmen were to be reinstated in pursuance to the said award, they would occupy the same position which they had at the time of their termination and merely because

their termination has been held to be illegal, they cannot claim to be reinstated as regular employees which they were not at the time of their termination. Therefore the appellant workmen cannot claim parity with regular employees and on that analogy their claim for same pay which is paid to the regular employees is clearly misconceived. The learned Single Judge has rightly held that the principle of equal pay for equal work in these circumstances would not be applicable.

6. We may record that a faint attempt was made by the learned counsel for the appellant workmen to show that the appellant workmen before termination of their services were given regular pay scale. However there is neither any averment to this effect nor any documentary proof in support thereof.

7. We also record the statement of learned counsel for the respondent at the Bar that the management has no objection if the workmen do not want to perform the duties and in that case, management is willing to pay wages in terms of orders on applications under Section 17B of the Act.

8. We thus do not find any merit in these appeals.

Dismissed.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

JULY 31, 2012
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