



2026:DHC:540



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

Reserved on: 14.11.2025
Pronounced on: 22.01.2026

+ W.P.(C) 1117/2003

SIYA RAM KUMAR

.....Petitioner

Through: Mr. R. K. Saini, Advocate.

versus

P.O. & PROMOD KUMAR TYAGI AND ANR.

....Respondents

Through: Mr. Jitesh Pandey, Mr. Aniket Singh, Mr. Chandan Singh and Mr. Naman Arora, Advs. for R-2.

CORAM:

HON'BLE MS. JUSTICE RENU BHATNAGAR

RENU BHATNAGAR, J.

CM APPL. 6685/2005

1. The present application has been filed by the petitioner/management under Order XLVII Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter 'CPC'), in W.P.(C) No. 1117 of 2003, seeking review of the order dated 16.09.2004 passed in CM. APPL. No. 4402 of 2003 on the respondent



No. 2/workman's application under Section 17B of the Industrial Disputes Act, 1947 (hereinafter 'ID Act') as also for consequential directions.

2. Before advertizing to the application under Section 17B of the ID Act, this Court deems it appropriate to first lay down the facts for adjudication.

3. The petitioner is a private limited company engaged in the business of manufacturing and sale/purchase of automobile and tractor parts. Respondent No. 2 was appointed as a Turner under the Petitioner *vide* appointment letter dated 01.09.1984 issued by the Petitioner.

4. *Vide* letter dated 24.10.1997, the petitioner ordered the transfer of respondent No. 2 from Kirti Nagar, New Delhi to another factory of the petitioner which was situated at Dundahera, Gurgaon w.e.f. 01.11.1997. The workman submitted that he raised an objection against his transfer and also sent a legal demand notice dated 12.11.1997.

5. Thereafter, respondent No. 2 raised an industrial dispute with regard to his transfer, which was referred for adjudication to Industrial Tribunal (hereinafter 'Tribunal') *vide* Notification dated 06.10.1998.

6. The learned Tribunal had held that the petitioner knew that respondent No. 2 could not reasonably be expected to join duties at



Gurgaon, which is far from Delhi, and therefore treated the transfer as illegal. Consequently, it held that the workman's failure to join at Gurgaon could not be used against him. The petitioner was accordingly directed to pay wages for the intervening period and grant continuity of service.

7. Aggrieved by the award dated 13.08.2002, the petitioner approached this Court through the present writ petition. During the pendency of the writ petition, the workman filed an application under Section 17B of the ID Act, supported by an affidavit stating that he had remained unemployed since the date of termination and continued to be unemployed.

8. Upon hearing the parties, this Court, *vide* order dated 16.09.2004, allowed the respondent No. 2's application under Section 17B of the ID Act. The relevant portion of the order dated 16.09.2004 is reproduced below:

“ The Respondent-Workman has averred in paragraph 3 of the application that he has remained unemployed during the pendency of the dispute before the learned Industrial Tribunal and is still unemployed. The application is supported by an affidavit. A reply has been filed by the Petitioner in which it is stated that the Respondent-Workman has a bank account in which certain deposits have been made. I have perused the statement of accounts and find that no regular deposits have been made, although two deposits of Rs.



2,000/- have been made in December, 2002. This by itself does not show that the Respondent-Workman is gainfully employed. It has further been contended by learned counsel for the Petitioner that the Respondent-Workman has a cell phone and also a landline in his name and the invoice of the cell phone has been attached. This also does not indicate that the Respondent-Workman is gainfully employed.

Under the circumstances, the Respondent-Workman is entitled to the wages last drawn or the minimum wages, whichever is higher, from the date of the Award, that is, 13th August, 2002. The arrears be paid to the Respondent-Workman within a period of six weeks from today. Subsequent payments be made month by month.

CM stands disposed of.”

9. A perusal of this Court's order dated 16.09.2004 shows that this Court noted that the respondent No. 2 had sworn an affidavit stating he remained unemployed during the pendency of the industrial dispute. The petitioner, in reply, pointed to certain deposits in his bank account and the fact that he had a landline and mobile phone connection which did not weigh with this Court to hold that the workman is gainfully employed.

10. Holding that there was no material to show that the workman was earning, this Court directed the payment of last draw wages or minimum wages, whichever was higher, from 13.08.2002, with



arrears to be cleared within six weeks and monthly payments to continue thereafter.

11. Following the passing of the order dated 16.09.2004, the petitioner filed the present review application seeking recall and modification of the said order.

12. Mr. R.K. Saini, learned counsel appearing on behalf of the applicant-management submits that the order dated 16.09.2004 allowing respondent No. 2's application under Section 17B suffers from errors apparent on the face of the record and warrants review.

13. He submits that this Court proceeded on an incorrect factual premise in observing that the workman had only two deposits of Rs. 2,000/- each in his bank account. It is further submitted that the copies of the passbook placed on record reflected five deposits during the relevant three-month period between November 2002 and January 2003, aggregating to approximately Rs. 25,424/- along with withdrawals of Rs. 25,000/-. It is submitted that these entries prove that the workman was earning during the period for which the 17B relief was granted.

14. It is submitted that soon after the 17B order was passed, the petitioner came across additional material showing that the workman was not only maintaining an independent bank account but was also in possession of a permanent account number and had filed income-tax



returns declaring gross receipts of about Rs. 4,70,000/- for the relevant assessment year.

15. It is submitted that these returns disclosed that the workman was running a proprietary business and earning income far in excess of the statutory relief granted to him. It is further submitted that this material was not within the petitioner's knowledge at the time of the original hearing and could not, with due diligence, have been produced earlier, thereby satisfying the requirement of 'new and important matter or evidence' under Order XLVII Rule 1 of the CPC.

16. It is submitted that the purpose of Section 17B of the ID Act is to ensure bare subsistence in cases where a workman has no means of livelihood, however the present case involves a workman who was demonstrably earning during the pendency of the writ petition and therefore not entitled to wages under Section 17B of ID Act.

17. Therefore, in view of the foregoing submissions, it is submitted that the instant review application may be allowed and the order dated 16.09.2004 be recalled and proceedings under Section 340 of the CrPC be also initiated against the respondent No.2.

18. *Per Contra*, Mr. Jitesh Pandey, learned counsel appearing on behalf of respondent No. 2, vehemently opposes the present review application submitting to the effect that the same is liable to be dismissed, being devoid of any merits.



19. It is submitted that the present review application is not maintainable under Order XLVII Rule 1 of the CPC. He submits that the petitioner is attempting to introduce an entirely new case through the guise of review. He urges that, on this ground alone, the application deserves outright dismissal. It is contended that review can be exercised only where there exists an error apparent on the face of the record, and not for the purpose of re-examining issues already adjudicated.

20. He places reliance on the judgment of a Coordinate Bench of this Court in *Ajai Kumar v. Sumitomo Mitsui Banking Corp., 2024 SCC OnLine Del 4974* to reiterate the well-settled principle that the power of review is extremely limited and may be exercised only where there is a patent and self-evident error apparent on the face of the record. It is thus urged that, in the absence of any demonstrable error apparent on the face of the record, the present review application is not maintainable and deserves to be dismissed.

21. It is submitted that the petitioner is misusing the process of law and the present application has been filed only to delay the proceedings and gain time. It is submitted that the respondent No. 2 has not been employed anywhere after his illegal termination/transfer and that whatever limited activity he undertook was only in connection with his family's small business, which he was compelled



to manage after losing his job. It is submitted that being the eldest son, his name was used for that purpose, though no independent gainful employment accrued to him. It is reiterated that despite best efforts, he could not secure any employment.

22. It is submitted that findings recorded by this Court were based on the material placed before it and are entirely in accordance with the evidence on record. It is contended that if the petitioner was aggrieved by the order dated 16.09.2004, the appropriate remedy was to pursue an appeal before the competent forum, instead, the petitioner has chosen to file a review application, which is not maintainable in law.

23. It is submitted that the petitioner's allegation of the respondent running a proprietary business cannot, by itself, be a ground to deny the relief already granted. He places reliance on *Taj Services Ltd. v. Industrial Tribunal-I, 1999 SCC OnLine Del 815* and *Birdhi Chand Naunag Ram Jain v. Presiding Officer, Labour Court No. IV, 2003 SCC OnLine Del 1187*, to submit that relief under Section 17B of the ID Act can be denied only where the employer establishes, to the satisfaction of the Court, that the workman has been employed in an establishment and has been receiving adequate remuneration during the pendency of the proceedings.

24. It is submitted that the distinction drawn in *Taj Services* (supra) directly applies to the present case, which is that even where a



workman undertakes some small-scale business merely for the survival of himself or his family, such activity does not amount to being "*employed in any establishment*" within the meaning of proviso of Section 17B of the ID Act.

25. Learned counsel for the respondent also draws attention to ***Kiran Uppal v. Ashok Kumar 2012 SCC OnLine Del 2858***, wherein this Court reaffirmed that Section 17B of the ID Act must be interpreted in line with its object and purpose, that is, to ensure that a workman receives subsistence wages from the date of the award until the challenge to that award is finally adjudicated. It was held that transient or intermittent employment does not bar relief under Section 17B of the ID Act.

26. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

27. Heard learned counsel appearing on behalf of the parties and perused the material on record.

28. For their arguments, both the parties have relied upon the additional documents filed with CM. APPL. 1100/2017.

29. Before examining the present application on merits, it is necessary to address, at the threshold, the maintainability of the present application in the limited boundaries of review jurisdiction. The power of review is not a rehearing of the matter, nor does it



permit the Court to revisit conclusions merely because another view may be possible. It is therefore appropriate to first consider whether the petitioner has demonstrated any ground that would justify reopening the order dated 16.09.2004 under Order XLVII of the CPC.

30. This Court finds guidance from the principles reiterated in *Ajai Kumar v. Sumitomo Mitsui Banking Corp.* (supra), wherein a Coordinate Bench of this Court while placing reliance on *Kamlesh Verma v. Mayawati, (2013) 8 SCC 320* passed by the Hon'ble Supreme Court made the following observations:

“24. This Court is of the view that in terms of the law laid down by the Hon'ble Supreme Court, an error alleged by the review petitioner must be such which is apparent on the face of the record and not an error which has to be fished out.

25. In simpliciter terms, the said error must be an error of inadvertence as the power of review can be exercised for correction of a mistake but not to substitute a view already taken to conclude the case. Further, the mere possibility of two views on the subject is not a ground for review.

26. With regard to the facts of the instant review petition, it is observed that the same is an appeal in the garb of a review petition. The petitioners have put forth various contents and the same clearly seem to be grounds for appeal. Since no new evidence has been placed on record by the petitioners to support their arguments, the same cannot be dealt with



under Section 114 of the CPC due to the limited scope of intervention."

31. From the above quoted part, this Court draws three clear principles that directly govern the present matter. First, the jurisdiction of review is confined to correcting a patent, self-evident error that stands out on the face of the record. Second, the power of review exists to rectify an inadvertent mistake and not to permit a substitution of the view already taken. Third, where the grounds urged are, in substance, grounds of appeal or where no new and important evidence is shown to have emerged, the exercise of review jurisdiction is barred.

32. In order to determine whether the present application meets the narrow threshold of review, this Court considers it appropriate to re-examine the relevant portion of the order dated 16.09.2004 and assess it in light of the governing principles noted above. Ordinarily, once the Court has consciously evaluated the material before it, review would not lie merely because the petitioner asserts that a different view was possible.

33. A careful reading of the impugned order indicates a faint ambiguity in the observation that respondent No. 2 had two deposits of Rs. 2,000/- in his bank account during the relevant period. The petitioner contends that the passbook reflected several deposits of



higher amounts which may not have been specifically adverted to. Though this by itself does not establish an error apparent, the presence of this limited uncertainty persuades this Court to briefly consider the present application to the extent necessary to assess whether any inadvertence occurred in the original appreciation of the bank entries.

34. The relevant portion of the passbook of respondent No. 2 is reproduced as below:

15/11/2002	760593	TCB#743-BY CLEARING		11856.00	13819.10
26/12/2002	7607632	TCB#464-BY CLEARING		10000.00	23819.10
28/12/2002	812195	TCB#1212-BY CLEARING	29000.00		3819.10
	781099	TO BALESHWAR TYAGI		1088.00	4907.10

35. Upon examining the relevant portion of the passbook placed on record, this Court notes that the entries for December 2002 reflect deposits of Rs. 11,856/- and Rs. 10,000/-, along with a withdrawal of Rs. 20,000/-. This Court is unable to locate any deposits of Rs. 2,000/- in the said period as recorded in the order dated 16.09.2004.

36. For the purposes of Section 17B of the ID Act, what is material is not the mere presence of monetary entries in a bank account, but whether such entries demonstrate employment in an establishment and the receipt of adequate remuneration. Even assuming the deposits reflected in the passbook are taken at their face value, they do not, in the opinion of this Court, establish any form of regular employment. At best, they indicate modest sums associated with the respondent's attempt to sustain himself by assisting in a small-scale family business



after the loss of his job.

37. The Hon'ble Supreme Court in *Rajinder Kumar Kindra v. Delhi Admn.*, (1984) 4 SCC 635 has made abundantly clear that survival-level assistance rendered in a family enterprise, or income derived merely to keep "body and soul together", cannot be elevated to "gainful employment" so as to deprive a workman of his statutory entitlements. The relevant portion of the said judgment is reproduced as below:

"21....In support of this submission Mr Jain pointed out that the appellant in his cross-examination has admitted that during his forced absence from employment since the date of termination of his service, he was maintaining his family by helping his father-in-law Tara Chand who owns a coal depot, and that he and the members of his family lived with his father-in-law and that he had no alternative source of maintenance. If this is gainful employment, the employer can contend that the dismissed employee in order to keep his body and soul together had taken to begging and that would as well be a gainful employment. The gross perversity with which the employer had approached this case has left us stunned..."

38. In view of the above discussion, the limited ambiguity noted in the order dated 16.09.2004, namely the reference to two deposits of Rs. 2,000/-, stands addressed upon examination of the passbook entries. While the deposits reflected therein are of higher amounts,



they do not establish gainful employment or regular remuneration so as to attract the proviso to Section 17B of the ID Act.

39. It is also necessary to address the petitioner's reliance on the respondent's possession of a Permanent Account Number, the filing of income-tax returns and the assertion that certain business receipts were declared therein.

40. It would not be out of place to mention here that the workman filed these documents by filing CM. APPL. 1100/2007 which was withdrawn by him on 17.08.2010 without any objection from the side of the appellant. After the withdrawal, there are no documents, in effect, on the court file on the basis of which appellant has raised his submissions of review.

41. Even otherwise, even if for the sake of arguments, these documents are taken into consideration, it is observed that the mere existence of a PAN or the filing of returns does not, by itself, establish that the respondent was "*employed in any establishment*". The material placed by the petitioner does not alter the legal position regarding activity undertaken by a workman for his subsistence. The meagre amount as reflected in the ITRs cannot be treated as gainful employment of the respondent/workman but are only modest sums necessary for the subsistence of the workman/respondent and his family. Consequently, this Court is satisfied that no "error apparent"



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exists which would justify reopening or recalling the Order dated 16.09.2024 under Order XLVII Rule 1 of the CPC.

42. Accordingly, the present review application is dismissed. List W.P.(C) 1117/2003 before the *Regular Roster Bench* on 9th February, 2026.

RENU BHATNAGAR, J.

JANUARY 22, 2026

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