
# The Misuse of Section 17B of The Industrial Disputes Act, 1947

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The Industrial Disputes Act, 1947 ["**ID Act**"] and its many amendments, have always striven to secure social justice to workmen and to ensure that they are not left helpless against industries and corporations. One such provision is Section 17B of the ID Act, which was introduced by way of The Industrial Disputes (Amendment) Act, 1982 which came into effect from 21.08.1984. Section 17B was enacted to give protection to workman who, having succeeded in obtaining an award from the Labour Court, Industrial Tribunal or National Tribunal, setting aside an order of termination of their service and directing their reinstatement, is not allowed to resume work, because the employer has challenged the order before the High Court or before the Supreme Court. The employer is then made liable to pay the wages last drawn by the employee during the period of pendency of such appeal.

**But** this social welfare legislation is being misused by certain workmen, who are unjustly enriching themselves at the expense of the industries and how the industries have been made to pay wages despite the workman having secured gainful employment elsewhere.

The Supreme Court of India has explained the object of Section 17B in ***Dena Bank Vs. Kirtikumar T. Patel***[1] wherein, it has held that the object of Section 17B is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award during the pendency of proceedings in which the reinstatement award is under challenge before the High Court or the Supreme Court.

The pre-requisite to be eligible for wages under Section 17B is filing of an affidavit by the workman, stating that he is not gainfully employed elsewhere. However, the proviso to Section 17B, holds that if it is proved to the satisfaction of the High Court or the Supreme Court, as the case may be, that the

workman had been employed and had been receiving adequate remuneration during the period of the challenge/appeal or part thereof, the Court shall order that no wages shall be payable. Thus, this provision intends to only protect those workmen who are not gainfully employed and would suffer from financial woes if not for Section 17B wages. However, this is not always the case.

Since there is no corollary provision in the ID Act preventing a workman from filing a false affidavit of non-employment nor is there any punishment prescribed for acts of perjury by the workmen, it has led to misuse of the Section 17B provision. Thus, certain workmen having secured gainful employment during the period of the trial or the following appeal file a false affidavit so as to secure back wages.

There is no sanctuary available to industries under the ID Act to shield themselves against such mendacious acts of the workmen. The only avenue left for the aggrieved industry would be to initiate a case of perjury against the deceiving workman. However, this too is of little consequence, as no monetary relief will be forthcoming, even if perjury is proven.

Additionally, the onus of proving whether a workman is gainfully employed or not has shifted from the employer to the employee on several occasions**.** Recently, in the case of **National Gandhi Museum Vs. Sudhir Sharma[2],** which was decided on *24.09.2021*, the Supreme Court upheld one of its previous rulings that the onus is on the employee, to prove that he was not gainfully employed during the period of challenge/appeal as he is in knowledge of the same and it further held that the issue of whether such burden is discharged depends on the facts of each case. However, subsequently, in **Pradeep S/o Rajkumar Vs. Manganese Ore India[3],** which was decided on *10.12.2021***,** the Supreme Court took a contrary view, holding that the burden was upon the employer to prove gainful employment of the employee during the relevant period. These antithetical judgements both made by the Supreme Court, make it difficult to ascertain the prevailing position of law.

The problems of industries are further compounded given the fact that even if the order of reinstatement is eventually overturned by the High Court or the Supreme Court, the employer will have no right to recover the back wages already paid to the workman pursuant to orders passed under Section 17B of the ID Act during the pendency of the appeal. This position was reiterated in the case of ***Dilip Mani Dubey Vs. Siel Limited and another*** [4].

With regard to determining the onus of proof for gainful employment, it is pertinent to consider Section 109 of the Bharatiya Sakshya Adhiniyam, 2023[5], which states that when some facts are especially within the knowledge of any person, the burden of proving that fact is upon him. When an employee is employed in a different establishment during the period of trial or appeal, this becomes

a fact which is in his special knowledge. Thus, the onus of proving lack of gainful employment must lie upon the employee. The Supreme Court has propounded this view in ***Talwara Cooperative Credit and Service Society Ltd. v. Sushil Kumar***[6].

Given the prevailing judicial framework and verdicts, it is imperative that the legislature steps in to clear the prevailing confusion and make stringent laws preventing misuse of the welfare provisions under the ID Act. Prescribing punishments or fines for filing false affidavits to claim back wages, would discourage workmen from filing false affidavits before the courts to ensure that the benefit of Section 17B wages is only available to those workmen, who are not gainfully employed and are consequently dependent upon this provision for their livelihood. However, considering the present position of law, it would be prudent on the part of the industries to elicit relevant information about the workmen's current employment, during the trial before the Labour Court, Tribunal or National Tribunal. One such source of information could be eliciting relevant data/information from the Provident Fund authorities, by serving them a notice through court. It is also advisable that the industries gather and produce, reliable proof and documents, of the workmen's employment prior to any appeal being preferred before the High Courts or the Supreme Court.

[1] (1999) 2 SCC 106

[2] Civil Appeal Nos. 8215-8216 of 2011

[3] Civil Appeal No. 7607 of 2021

[4] (2019) 4 SCC 534

[5] Corresponding provision to Section 106 of the Indian Evidence Act, 1872

[6] (2008) 9 SCC 486