Delhi High Court
Delhi Transport Corporation vs The Presiding ... on 17 November, 2011
Author: P.K.Bhasin

```
*       IN THE HIGH COURT OF DELHI AT NEW DELHI
%                       W.P.(C) 5979/2001


+                           Date of Decision: 17th November, 2011

Delhi Transport Corporation                          ....Petitioner
!                Through: Mr. Alok Shankar & Mr. Ranjit Sharma,
                          Advocates

                                Versus

The Presiding Officer,Industrial Tribunal &Anr. .....Respondents
                Through: Mr. Padma Kumar & Mr.P.Relhan,
                          Advocates


      CORAM:
*     HON'BLE MR. JUSTICE P.K.BHASIN

1. Whether Reporters of local papers may be allowed to see
   the Judgment? (No)

2. To be referred to the Reporter or not? (No)

3. Whether the judgment should be reported in the digest?(No)
```

JUDGMENT

P.K.BHASIN, J: (ORAL) The petitioner, Delhi Transport Corporation, has challenged the award of the Labour Court passed on 14th November, 2000 whereby the reference made to it at the instance of the concerned workman, W.P.(C) 5979/2001 Page 1 of 16 who expired during the pendency of this writ petition, (hereinafter to be referred as â the deceased workmanâ), regarding the industrial dispute raised by him concerning his premature retirement from service by the petitioner herein(hereinafter to be referred as â the managementâ) has been decided against the management and it has been held that premature retirement of the workman was illegal.

2. The relevant facts are that the deceased workman was employed with the management as a driver. In the year 1991 he was got medically examined and the medical Board vide its report dated 27 th July, 1991 declared him unfit to work as a driver because he was suffering from â colour blindnessâ . As per regulation no. 10 of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulation, 1952 the employees of DTC retire on attaining the age of 58 years but he management in its discretion may continue any employee in service upto the age of 60

years. Under the same regulation it is also provided that the management can pre-maturely retire any employee on medical grounds before attaining the age of 58 to 60 years. It is admitted case of the management that on being found unfit by the medical Board to work as a driver the management did not avail of its right to pre-maturely retire the deceased workman under regulation no.10 at that point of time. It is also an admitted case of the management that any employee of DTC who was found to be medically unfit for the post which he was holding at the time of medical examination during those days when the workman herein was got medically examined could be continued in employment on any W.P.(C) 5979/2001 Page 2 of 16 other post for which he was medically fit. The deceased workman had represented to the management that he should be continued in employment as a Ticket Tallying Collector (TTC). On receipt of that request from the deceased workman he was again got medically examined by the management and the medical Board vide its report dated 18th September, 1991 declared him fit for the post of TTC.

3. Learned counsel for the management during the course of hearing had submitted that after the deceased workman had been found fit for the post of TTC he was continued in service as a TTC as per the policy of DTC existing at that time but that continuation of job was purely on temporary basis and then in July, 1992 the management had passed a resolution no.87/92 to the effect that any employee who becomes permanently unfit to discharge his duties for the post held by him should be pre-maturely retired but his name could be registered for any other lower or equivalent post subject to availability of vacancy and his being found medically fit. So, the management had taken a decision to pre-maturely retire the workman w.e.f. 4/8/92 as there was no regular vacancy of a TTC. It was also submitted that continuation of the deceased workman in service as a temporary TTC would not have justified his continuation in service in that temporary capacity endlessly and since during the period of about one year, when he remained in service as a temporary TTC, no regular vacancy had become available the management had decided to invoke regulation no. 10 to prematurely retire him vide order dated 4th August, 1992.

W.P.(C) 5979/2001 Page 3 of 16

4. The decision of the management to retire the deceased workman pre-maturely led to the raising of an industrial dispute by the deceased workman and that dispute was referred for adjudication to the Labour Court by the appropriate Government vide its notification dated 16 th August, 1994. The dispute referred to the Labour Court was as under:-

> "Whether the termination of services of Shri Deep Chand by way of retirement is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?"

5. The Labour Court answered the reference vide award dated 14/11/2000 in favour of the workman and directed his reinstatment in service with the benefit of continuity as also full back wages. It was also directed that in case no vacancy was available for him he would be kept on supernumerary post until a suitable post is available with the DTC or he attains the age of superannuation, whichever was earlier". While holding so the Labour Court relied upon the provisions of Section 47 of the "The persons with Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act,

1995(â the Act of 1995â in short) which prohibits termination of the services of any employee in any establishment, as defined in Section 2(k) of this Act including Government Departments, who acquire any disability during service. Hence, this writ petition came to be filed by the management.

6. Learned counsel for the management submitted that the learned W.P.(C) 5979/2001 Page 4 of 16 Presiding Officer of the Labour Court was not justified in setting aside the impugned retirement order dated 4th August, 1992 by taking shelter under the provisions of Section 47 of the Act of 1995 since this Act had come into force sometime in the year 1996 while the impugned order of premature retirement of the deceased workman had already been passed in the year 1992. Therefore, learned counsel submitted, this writ petition deserves to be allowed and the impugned award needs to be set aside on this ground alone. In this regard, learned counsel placed strong reliance on one judgment of a Division Bench of this Court in "Delhi Transport Corporation Vs. Rajbir Singh", 2003 VII AD (DELHI) 537.

7. On the other hand, learned counsel for the legal representatives of the deceased workman fully supported the impugned award and argued that even though the Act of 1995 was not there when the workman was prematurely retired but since it was there when the matter was still pending before the Labour Court the workman became entitled to the benefit of Section 47. In support of this submission he also cited one judgment passed by a Division Bench by this Court in the case of "Delhi Transport Corporation Vs. Harpal Singh" reported as 156 (2009) Delhi Law Times 481 (DB).

8. After having heard the learned counsel for the parties and going through the record, I have come to the conclusion that this writ petition deserves to be dismissed as the impugned order of the management dated 4th August, 1992 could not be sustained and has been rightly set aside by the learned Labour Court by extending the W.P.(C) 5979/2001 Page 5 of 16 benefit of Section 47 of the Act of 1995 which reads as under:-

> "47. Non-discrimination in Government employment- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:
>
> Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:
>
> Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.
>
> (2) No promotion shall be denied to a person merely on the ground of his disability: carried on in any establishment, by notification and subject to such conditions, if any, may be specified in such notification, exempt any establishment from the provisions of this section."

9. Section 47 of the Act of 1995 had come up for consideration before a Division Bench of this Court in the case of DTC Vs Harpal Singh(supra), which was cited by the learned counsel for the workman. In that case also the concerned workman was pre-maturely retired by the management of DTC because of his having acquired some disability which had rendered him unfit for performing the duties of the post held by him. The decision to retire him pre-maturely had been taken before the enactment of the Act of 1995. Still, the labour Court had set aside the pre-mature retirement of the workman concerned and a learned Single Judge had upheld that decision. The Division Bench in the LPA filed by DTC, after referring to various judgments of the Supreme Court on the point of retroactivity of statutes as also some judgments of this Court including the one relied upon by the learned counsel for the management here in the case of W.P.(C) 5979/2001 Page 6 of 16 DTC Vs Rajbir Singh(supra), had come to the conclusion that the benefit of Section 47 of the Act of 1995 was available to the workman even though he had been pre-maturely retired from service by the time this Act had come into force. It would be beneficial to take special note of some of the paragraphs from this Division Bench judgment which are relevant for the case in hand. Those paras are re-produced below:-

> "15. Thus, if a person is in employment may be his disability might have been acquired before the date the Act came into force, the benefit of Section 47 of the Act needs to be conferred upon the petitioner if he is sought to be terminated after coming into force of the Act. However, the said Act does not have any retrospective operation. To that extent the judgment of the learned Single Judge cannot be upheld.
>
> 16. However, whether de-hors the provisions of the said Act, benefits of similar nature can be granted to a person who is shunted out of the service by the state or the instrumentality of the state is another question. In this regard also some observations made in the case of Rajbir Singh (Supra) are important and needs to be referred to. Those observations are as under:
>
> 9. Section 47 of the said Act occurs in Chapter VII thereof which deals with non-discrimination. Section 44 deals with non- discrimination in transport whereas Section 45 deals with non- discrimination on the road. Section 46 deals with non-discrimination in the built environment. Section 47 deals with non- discrimination in Government employment. The said provision reads thus:
>
> 47. Non-discrimination of Government employment.- (l) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service.
>
> Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the Age of superannuation, W.P.(C) 5979/2001 Page 7 of 16 whichever is earlier.'` (2) No promotion shall be denied to a person merely on the ground of his

disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.'`

10. History of legislation as noticed here in before clearly shows that said Act was enacted in conformity with the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. It is not in dispute that the Act is beneficent in nature. It is also not in dispute that by reason of the said Act provisions have been made so that the persons with disability feel themselves as a part of the society which eventually may lead to his full participation at the work place. Nobody suffers from disability by choice. Disability comes as a result of an accident or disease.

11. The said Act was enacted by the Parliament to give some sort of succour to the disabled persons. By reason of Section 47 of the said Act which is beneficent in nature, the employer had been saddled with certain liabilities towards the disabled persons. Section 47 of the Act we may notice does not contemplate that despite disability, a person must be kept in the same post where he had been working. Once he is not found suitable for the post he was holding, he can be shifted to some other post but his pay and other service benefits needs to be protected. The second proviso, appended to Section 47 of the Act in no uncertain terms, state that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available. The said Act provides for social security for the disabled persons and if for the said purpose a statutory liability has been thrust upon the employer, the same cannot be held to be arbitrary.

12. Yet again this Bench in Social Jurist v. Union of India CWP 1283/2002, decided on 13.8.2002 observed:

It is common experience of several persons with disabilities that they are unable to lead a full life due to societal barriers and discrimination faced by them in employment access to public spaces, transportation etc. Persons with disability are most neglected lot not only in the society but also in the family. More often they are an object of pity. There are hardly any meaningful attempts to assimilate them in the mainstream of the nation's life.

The apathy towards their problems is so pervasive that even the number of disabled persons existing in the country is not well documented.

2. T.R. Dye, Policy Analyst in his book 'Understanding Public Policy' says:

Conditions in society which are not defined as a problem and for which alternatives are never proposed, never become policy issues. Government does nothing and conditions remain the same.

3. This statement amply applies in the case of the disabled. At least this was the position till few years ago. The condition of the disabled in the society was not defined as a problem, and Therefore, it did not become public issue. It is not that this problem was not addressed. Various NGOs, Authors, Human Rights Groups have been focusing on this problem from time to time and for quite sometime. But it was not defined as a problem which could become public issue. Until the realization dawned on the Government and the policy makers that the right of the disabled was also human right issue. It was further observed: Unless the mindset of the public changes; unless the attitude of the persons and officials who are given the duty of implementation of this Act changes, whatever rights are granted to the disabled under the Act would remain on paper."

19. In Baljeet Singh's case (supra) there was also a reference to a judgment delivered by the Apex Court in the case of Ved Prakash Singh v. DTC SLP No. 1575/1991 decided on 05.08.1991 i.e much before the coming into force of the said Act, wherein a direction was given to DTC to post the appellant who became disabled during the course of service an equivalent post and to pay salary to him for the intervening period by holding that in case of an employee rendered physically handicapped due to a disease, the Court has power to give directions regarding absorption of such employee enjoying a pay scale equal to that of his original post.

20. In this regard we may also refer to the judgment delivered by a Single Judge of this Court (Vijender Jain, J), as his Lordship then was, in the case of Vijender Singh v. D.T.C. (Supra) relying upon the judgment of the Hon'ble Supreme Court in the case of Ved Prakash Singh (supra) wherein it has been held: I find no force in the argument of Counsel for the respondent. Even before coming into effect of the Disability Act, Supreme Court in Ved Prakash Singh v. Delhi Transport Corporation and Ors., SLP No. 1575/91, held on the basis of the policy of respondent which W.P.(C) 5979/2001 Page 9 of 16 was in vogue at that time that respondent adopted the policy to rehabilitate the physically handicapped persons. If the respondents had their own policy as is reflected by the Circulars dated 15.10.73 and 20.01.92, the Act which came subsequently has secured the said principle in the statute, intention of the Legislature in enacting the said Act was to rehabilitate the persons who acquired disability during the course of employment by providing suitable alternative employment. Similarly in State of Haryana v. Narender Kumar Chawla: [1994]1SCR657 , Supreme Court held that in case of employees rendered physically handicapped during the course of employment, the Court has power to give directions regarding observation of such employee carrying a pay scale equal to that

of his original post. Judging from any angle it cannot be said that the respondents are under no obligation to provide suitable alternative employment, keeping in view the disability of the petitioner in mind and on the basis of their own circulars.

21. In O.P. Sharma v. Delhi Transport Corporation and Anr. (supra) some other observations have also been made which approves grant of similar reliefs de hors the provisions of the Act. They are also reproduced for the sake of reference:

13. The provision was considered in several decisions, by this Court. It has been held that it applies, regardless of where the employee incurs the disability; it acquires primacy, and can be invoked, without application of laches; its benefits have to be given even if compensation is paid, for premature retirement of an employee. The position emerging from the various authorities are as follows:

1) Laches cannot be set up to deny relief, since the Act is a beneficial legislation: Krishan Chander v. DTC: 2003(71)DRJ11

2) The provisions of the Act have to be given effect to in respect of grievances that arose before enactment of the Disability Act: Vijender Singh v. DTC: 105(2003)DLT261 ; DTC v. Harpal Singh: 105(2003)DLT113 ;

3) The provisions categorically enjoin every employer not only to retain, and desist from discriminating employees suffering from impairment, but also to place them in other posts, without depriving any service conditions or benefits, if they are unable the function in their posts: DTC v. Rajbir Singh: 100(2002)DLT111 ;

14. All 'establishments,' defined to include those under the control of the Government, are under an obligation to comply with the Act, particularly Section W.P.(C) 5979/2001 Page 10 of 16

47. This obligation is merely an affirmation of the primary duty not to discriminate, enjoined by Article 14 of the Constitution of India. The Supreme Court had recognized the need by the employer, particularly the State, to ensure rehabilitative measures to persons incurring disability. This emerges from reported decisions prior to the coming into force of the Act (Ref (Ref Rakesh Chandra Narayan v. State of Bihar 1986 (Supp) SCC 576; B.R. Kapoor v. Union of India AIR 1990 SC 662 and National Federation of Blind v. Union Public Service Commission: (1993)IILLJ452SC). The Act merely ave statutory shape to the primary right of such persons to non-discrimination.

15. In Ramji Purshottam v. Laxmanbhai D. Kurlawala: AIR2004SC4010 , the Supreme Court held as follows: The law coming into force during the pendency of the proceedings is being applied on the date of judgment to the pre-existing facts for the purpose of giving benefit to the tenant in the pending proceedings. This is not

retroactivity.

14. Justice G.P. Singh states in Principles of Statutory Interpretation (9th Edn., 2004, at p. 462) [T]he fact that a prospective benefit under a statutory provision is in certain cases to be measured by or depends on antecedent facts does not necessarily make the provision retrospective. ... the rule against retrospective construction is not always applicable to a statute merely because a part of the requisites for its action is drawn from time antecedent to its passing.'` In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha1 the Constitution Bench held that Bombay Act 57 of 1947 is a piece of legislation passed to protect the tenants against the evil of eviction. And the benefit of the provisions of the Act ought to be extended to the tenants against whom the proceedings are pending on the date of coming into force of the legislation. Earlier, in the decision reported as S. Sai Reddy v. S. Narayana Reddy : (1991)3SCC647 , the Supreme Court had to consider the impact of an enactment, which conferred a new statutory right, by way of entitlement to female Hindus, in co- parcenary properties. Upon resistance to use of the amendment in pending proceedings, on the ground that the rights were freshly created, and applied prospectively, and could not apply in pending proceedings, which were governed by law existing on the date of institution of proceedings, the Court held that:

Since the legislation is beneficial and placed on the statute book with the avowed object of benefitting women which is a vulnerable W.P.(C) 5979/2001 Page 11 of 16 section of the society in all its stratas, it is necessary to give a liberal effect to it. For this reason also, we cannot equate the concept of partition that the legislature has in mind in the present case with a mere severance of the status of the joint family which can be effected by an expression of a mere desire by a family member to do so. The partition that the legislature has in mind in the present case is undoubtedly a partition completed in all respects and which has brought about an irreversible situation. A preliminary decree which merely declares shares which are themselves liable to change does not bring an out any irreversible situation. Hence, we are of the view that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act.

16. In the decision reported as Dilip v. Mohd. Azizul Haq II: [2000]2SCR280 , the Supreme Court explained the meaning of retroactivity, and application of a law, enacted during pendency of proceedings:

The result is that if at the time of the institution of the suit for eviction Clause 13-A was not in force, but at the time of appeal such a clause is introduced, the tenant in appeal becomes entitled to its protection. We draw support for these propositions from the three decisions of this Court cited by the learned Counsel for the appellants. therefore, we are of the view that the High Court was not justified in holding that there was no appeal filed or pending against the tenant. In this case, although a decree for eviction had been passed in the suit, that decree was under challenge in a

proceeding arising out of that suit in appeal and was pending in a court. Thus, an appeal being a rehearing of the suit, as stated earlier, the inference drawn by the High Court that no proceedings were filed or pending against the tenant as on the date would not be correct. 8. The High Court further concluded that the amendments have no retrospective effect. The provision came into force when the appeal was pending. Therefore, though the provision is prospective in force, has 'retroactive effect '. This provision merely provides for a limitation to be imposed for the future which in no way affects anything done by a party in the past and statutes providing for new remedies for enforcement of an existing right will apply to future as well as past causes of action. The reason being that the said statutes do not affect existing rights and in the present case, the insistence is upon obtaining of permission of the Controller to enforce a decree for eviction and it is, therefore, not retrospective in effect at all, since it has only retroactive force.

W.P.(C) 5979/2001 Page 12 of 16

9. The problem concerning retrospectivity concerning enactments depends on events occurring over a period. If the enactment comes into force during a period it only operates on those events occurring then. We must bear in mind that the presumption against retrospective legislation does not necessarily apply to an enactment merely because a part of the requisites for its action is drawn from time antecedent to its passing. The fact that as from a future date tax is charged on a source of income which has been arranged or provided for before the date of the imposition of the tax does not mean that a tax is retrospectively imposed as held in Commrs. of Customs and Excise v. Thorn Electrical Industries Ltd. Therefore, the view of the High Court that Clause 13- A is retrospective in effect is again incorrect.

10. The High Court further took the view that the expression 'premises' in the Act (sic Order) does not state as to when the amendment was to be effective as it does not state whether the amendment was retrospective or prospective. The same is on the statute-book on the date on which the suit or proceeding is pending for purpose of eviction and cannot ignore the provision on the statute- book. therefore, the view of the High Court on this aspect of the matter also, is incorrect. The arguments advanced on behalf of the respondents that these amendments are retrospective in character and could not have been made in the absence of an authority under the main enactment by virtue of which such order is made are untenable.

17. It would therefore appear that where by an enactment, beneficial measures are introduced, a litigant is entitled to avail of its benefits, certainly in pending proceedings. In the present case, the DTC, an instrumentality of the State, and admittedly bound by Article 14, was under an obligation to behave in a non-discriminatory and non-arbitrary manner. During the pendency of litigation, the Act was brought into force; it gave statutory shape to the principle of non-discrimination at the workplace. Hence, its application cannot be construed as retrospective

application of a later law.

23. It has been further observed in Rajbir Singh case (Supra) which reads as under 39, In Rameshwar Dass v. State of Haryana: (1995)IILLJ716SC , the Apex Court held:

3. The question whether a State Road Transport Corporation can retire the bus drivers on the ground of their defective or subnormal eye-sight developed during the course of the employment has been W.P.(C) 5979/2001 Page 13 of 16 examined by this Court in the case of Anand Bihari v. Rajasihan State Road Transport Corporation,. This Court held that such terminations of service were unjustified, inequitable and discriminatory, though not amounting to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act. It was impressed by this Court that service conditions of the bus drivers must provide adequate safeguards because such bus drivers have developed defective eye-sight or subnormal eye- sight because of the occupational hazards. A scheme was directed to be framed for providing alternative jobs along with retirement benefits and for payment of additional compensation proportionate to the length of service rendered by them, in case of non availability of alternative jobs, it was brought to our notice that in view of the judgment in Anand Bihari v. Rajasthan State Road Transport Corporation, the Transport Commissioner, State of Haryana has issued a communication dated 20.8.1992.

24. Even though the Labour Court order was not so explicit while giving an award in favor of the respondent which has been upheld by the learned Single Judge, the benefits which have been granted to the respondent also flows from the constitutional obligations imposed upon the state accepted and emphasized by the Apex Court as well as our own court in a number of Judgments (supra) awarding the reinstatement of the workmen in service cannot held to be illegal more so when similar provisions came into the statute by enactment of Section 47 of the said Act.

25. In these circumstances, while holding that the provisions of Section 47 of the Act cannot be given retrospective operation but in a pending proceedings, the benefit of the provisions can certainly be extended. This is also the mandate of Article 41 of the Constitution of India. Thus, we do not find any infirmity in the judgment of the learned Single Judge or the award given by the Labor Court."

10. In the wake of this decision of the Division Bench of this Court hardly any scope is left to interfere with the award of the Labour Court in the present case. The above paras extracted from the judgment of this Court make it clear that the benefit of Section 47 of the Act of 1995 has been extended by this Court even to those workmen who had been retired from service by the DTC before coming into force of this W.P.(C) 5979/2001 Page 14 of 16 legislation enacted for the benefit of workers in Government departments and establishments acquiring some kind of disability during service by taking shelter under Article 41 of the Constitution of India. As far as the judgment of this Court relied upon by the learned counsel for the management is concerned the same if of no

applicability here since in that case the managementâ s plea was that Section 47 of the Act of 1995 would not get attracted where the workman has acquired some disability before the said Act came into force. That plea was not accepted since the decision to retire the workman was taken after the promulgation of the Act of 1995. So the workman here was rightly given the relief of re-instatement in service.

11. There is another reason also for setting aside the pre-mature retirement of the workman. As noticed already, it is admitted case of the management that after the deceased workman had been declared medically unfit to continue in employment as a driver it did not invoke regulation no. 10, which is now being heavily relied upon in support of this writ petition. Instead, it had decided to continue him in service as a TTC for which post he was medically fit. That continuation of the deceased workman as a TTC was a temporary arrangement only subject to the availability of a regular vacancy within a reasonable period of time, as was argued by the counsel for the management, cannot be accepted as this was not the stand taken by it before the Labour Court.

12. In any case, the resolution being relied upon having been passed on 4th August, 1992, by which time the workman had already been W.P.(C) 5979/2001 Page 15 of 16 retained as a TTC for almost a year, it could not be used against him by giving retrospective operation and by taking back the benefit of retention in service already given to the workman under the old policies as contained in its resolution dated 15th October, 1973 and 20th January, 1992.

13. For the aforesaid reasons, this writ petition is dismissed. Since it is not being disputed on behalf of the legal representatives of the deceased workman that in normal course he would have retired from service in the year 2004, the only relief which now his legal representatives would get is the financial benefits which the deceased workman would have got if he had actually been retained in service upto the date of his superannuation, which is stated to be 28th February, 2004. The petitioner-management shall calculate the financial benefits and make the payment within two months from today to the legal representatives of the deceased workman.

14. The petitioner is also burdened with costs of ` 10,000/-.

P.K. BHASIN, J NOVEMBER 17, 2011/pg W.P.(C) 5979/2001 Page 16 of 16