

(2018) 01 DEL CK 0073

In the Delhi High Court

Case No : 2620 of 2008

AIRPORT AUTHORITY OF INDIA

APPELLANT

Vs

V. VARDHARAJAN & ORS.

RESPONDENT

Date of Decision : 18-01-2018

Acts Referred:

Industrial Disputes Act, 1947, Section 17B - Payment of full wages to workman pending proceedings in higher courts

Citation : (2018) 01 DEL CK 0073

Hon'ble Judges : Vinod Goel

Bench : Single Bench

Advocate : Rajan Sabharwal, Atul T.N.

Final Decision : Disposed

Judgement

1. The present writ petition has been filed by the petitioner feeling aggrieved by the impugned Award dated 05.10.2007 passed by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi (in short "Industrial Adjudicator") in ID No.104/2000, in case titled as "V. Varadha Rajan & 4 others Vs. The Airport Director, Airport Authority of India", by which the petitioner herein was directed to reinstate the workmen/respondents herein w.e.f. 06.12.1996 along with 25% back wages and cost of Rs.25,000/- within two months from the date of publication of the award and to consider their case for regularization.

2. The respondent no. 1, 2 and 3 have filed their respective applications under Section 17-B of the Industrial Disputes Act, 1947 (in brief "ID Act"). Respondents no. 1, 2 and 3 have pleaded in their respective applications that they are not gainfully employed in any establishment and receiving any remuneration since the date of termination of their services. They have pleaded that last wages of each of them was Rs.4,435/- per month and thereafter wages and allowances were increased manifold and they are entitled to last drawn wages or the minimum wages whichever is higher during the pendency of this writ petition

from the date of the award. These respondents have also filed their separate affidavits in support of their applications.

3. In its reply, the petitioner pleaded that in the impugned Award dated 05.10.2007, the Industrial Adjudicator had observed that the workmen are manual workers and it cannot be said that they were sitting idle during their unemployment and must be doing some job off and on. It is also observed that they are not employed in any establishment but it is presumed that they must be doing some sort of work. In parawise reply to the applications, the petitioner has denied all the allegations of the applicants/respondents. Subsequently, on the basis of some investigations carried out by the petitioner through one detective agency known as M/s. Trident Sleuths (P) Ltd., Sh. Ravinder Kumar, Manager (HR) of the petitioner filed his affidavit dated 10.02.2011 to the effect that the respondent no. 1 to 3 were not found residing at their given addresses. The investigation report of the said detective agency is also enclosed along with the affidavit.

4. The respondent no. 1 filed his additional affidavit dated 16.09.2010 to the effect that he was born on 01.05.1956 at Thottiyampatti Colony, Namakkal Taluk, Namakkal District. Along with his affidavit, he has annexed the copy of his Aadhar Card No. 7256 5146 6937 of the same address. The respondent no. 2 and 3 have filed their separate additional affidavits dated 03.04.2014 along with the copy of their election identity cards giving their Delhi addresses. On behalf of petitioner, Mr. Girish Kumar, Asstt. General Manager (HR) filed an additional affidavit to the effect that they got carried out further investigation and found that the respondent no. 1 is working as a daily wager at Rs.300/- in a private college at Namakkal.

5. Learned counsel for the respondent no. 1, 2 & 3 submits that the respondents are entitled to the benefit of Section 17-B of the ID Act since the impugned award is of reinstatement of the respondents; the writ petition has been filed challenging the impugned award by the petitioner; the respondents are not gainfully employed in any establishment during such period and they have filed their respective affidavits. He also submits that the last earning wages of the respondents No. 1 to 3 were Rs.4,435/- per month each and minimum wages have thereafter increased manifold.

6. Per contra, learned counsel for the petitioner vehemently argued that the addresses given by the respondents no.1, 2 and 3 were found false and they have concealed the material facts of their employment from this court. He argued that the investigations were carried out by them and the respondents were not found residing at their given addresses. He also referred the observations of the Industrial Adjudicator while deciding Issue No. 4 to the effect that the workmen are manual workers and it cannot be said that they were sitting idle during their unemployment and they must be doing some job off and on and in these circumstances, it is to be presumed that they must be doing some sort of work. He further submits that the Assistant General Manager of the

petitioner has filed additional affidavit regarding the employment of the respondent no.1 in a private college at Namakkal as a daily wager @ Rs.300/-. He points out that these applications of the respondents no.1 to 3 were dismissed for non-prosecution by this court on 18.01.2012. However, learned counsel for both the parties point out that CM No. 5891/2013 was filed for restoration of these applications and at the time of arguments, learned counsel for the respondents no.1 to 3 stated that in the eventuality if the applications under Section 17-B of the ID Act are allowed, they would not claim benefit for the period of 445 days i.e. the delay in filing the application for recalling of the order dated 18.01.2012. Accordingly, these applications were restored by this court on 01.09.2014.

7. To appreciate the submissions raised at the bar, it would be profitable to refer Section 17-B of the ID Act, which reads as under:- "17B. Payment of full wages to workman pending proceedings in higher courts.- Where in any case, a Industrial Adjudicator, 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."

8. A perusal of the provision reflects requirement of following conditions: - (i) An award of reinstatement of a workman by Labour Court/Tribunal is challenged in any proceeding before High Court or Supreme Court;

(ii) Workman has not been employed in any establishment during such period;

(iii) An affidavit to this effect has been filed by the workman in such court;

(iv) Employer shall be liable to pay such workman during the pendency of such proceedings full wages last drawn by him; and

(v) 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 such period or part thereof, the court shall order that no wages shall be payable under this section for such period or part thereof as the case may be.

9. This provision came up for interpretation before the Hon"ble Supreme Court in Dena Bank v. Ghanshyam, (2001) 5 SCC 169, wherein their Lordship has opined

as under: - "9. The Statement of objects and reasons for inserting the said provision indicates that when Industrial Adjudicators pass awards of reinstatement, they are often contested by employers in the Supreme Court and High Courts. To mitigate the hardship that would be caused due to delay in implementation of the award, it was proposed to provide for payment of wages last drawn by the workman concerned from the date of the award till the dispute between the parties is finally decided in the High Courts or the Supreme Court. It follows that in the event of an employer not reinstating the workman and not seeking any interim relief in respect of the award directing reinstatement of the workman or in a case where the court is not inclined to stay such award in toto the workman has two options either to initiate proceeding to enforce the award or be content with receiving the full wages last drawn by him without prejudice to the result of the proceedings preferred by the employer against the award till he is reinstated or proceedings are terminated in his favour, whichever is earlier. In *Dena Bank's case* (1999) 2 SCC, 106, this Court elucidated the expression full wages last drawn as follows:

".....The Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and therefore used the words full wages last drawn."

10. It may be noticed that Section 17-B of the Act does not preclude the High Courts or this Court under Articles 226 and 136 of the Constitution respectively from passing appropriate interlocutory orders, having regard to the facts and circumstances of the case, in the interests of justice. [*Dena Banks case* (supra)]. The High Court or this Court may, while entertaining employers challenge to the award, in its discretion, in appropriate cases, stay the operation of the award in its entirety or in regard to back wages only or in regard to reinstatement without interfering with payment of back wages or on payment of wages in future irrespective of the result of the proceedings before it etc. and/or impose such conditions as to the payment of the salary as on the date of the order or a part of the back wages and its withdrawal by the workman as it may deem fit in the interests of justice. The court may, depending on the facts of a case, direct payment of full wages last drawn under Section 17-B of the Act only by the employer to the workman. The question whether a workman is entitled to the full wages last drawn or full salary which he would be entitled to in the event of reinstatement while the award is under challenge in the High Courts or this Court depends upon the terms of the order passed by the Court, which has to be determined on interpretation of the order granting relief."

10. It has been held by the Hon"ble Supreme Court in *Uttaranchal Forest Development Corpn. And another v. K.B. Singh and others*, (2005) 11 SCC 449, that only such workmen in whose favour there are awards of reinstatement and who have filed affidavits of their not being in gainful employment, shall be entitled to be granted reinstatement or in lieu thereof paid wages last drawn by them on respective dates on their terminations from services and their

entitlement for such wages would be from the respective dates by filing affidavits by each of them in this court in compliance with Section 17-B of the ID Act.

11. The Division Bench of this court in *S.K. Mitra v. Asst. General Manager State Bank of India*, in LPA 378/2011, decided on 25.04.2011, while dealing with the requirement of Section 17-B of the ID Act held as under: - "9. We have referred to the aforesaid authorities for the purpose of the legislative intent under Section 17-B of the Act; the nature of affidavit to be filed by the workman; the meaning of gainful employment; adequate remuneration and obligation on the part of the employer to show that there is adequate remuneration being received by the workman; the concept of onus and such other aspects. As is manifest, in the case at hand, the workman has filed the affidavit stating, inter alia, that he was not gainfully employed since the date of his discharge from the bank. The bank relied on the report of the investigating agency hired by it that the respondent was working in the shop of iron and steel as a computer operator-cum-accountant officer and is earning Rs.6500/- per month and that he owns a Maruti Car, a scooter and a house. The appellant has disputed the above finding of the bank.

10. In view of the allegations and counter allegations made, it is the duty of the Court to arrive at a conclusion with regard to the entitlement of the benefit under Section 17-B of the Act keeping in view the decisions in *Dena Bank (supra)*, *Viveka Nand Sethi (supra)*, *K.B. Singh & Ors. (supra)*, *Vinod Kumar (supra)* and *Bhagawan Giri (supra)*. The writ court has to see whether the workman received adequate remuneration during such period and whether the respondent-management has produced ample material to show that the workman has been really gainfully employed. Mere survival would not be enough. It will depend upon the factum of adequacy of amount received. In the case at hand, as we perceive, the learned Single Judge has erroneously observed that the workman had filed an application after 12 years as the same is not factually correct. It is clear that the appellant filed the application in quite promptitude. The informations that have been directed by the learned Single Judge to be given by the workman are in the realm of roving enquiry putting the entire burden on the workman. Such a roving enquiry, in our considered opinion, is unwarranted and, accordingly, the order impugned has to be set aside."

12. The appeal filed against the order of the Division Bench of this court was dismissed by the Apex Court in SLP (C) No. 28192/2011 on 02.01.2014.

13. In the present case, all three respondents/workmen have pleaded in their respective applications supported by their affidavits that they are not gainfully employed in any establishment. The petitioner has relied upon the report of the detective agency on the basis of which an affidavit has been filed by Manager (HR) of the petitioner stating that the respondents were not found at the given addresses. In the additional affidavit filed by the Assistant General Manager (HR), it is stated that the respondent no.1 has been working in some college as a daily wager @ Rs.300/- but the particulars of the college/establishment have not

been furnished by the petitioner. As held by Division Bench of this Court in S.K. Mitra's case (supra) the petitioner//Management failed to place on record any material what to speak of ample material that these respondents were really gainfully employed in any establishment during this period. In fact, the petitioner has involved itself in roving enquiry which is unwarranted. The observations of the Industrial Adjudicator are of no consequence as mere survival would not be enough as held in S.K. Mitra's case (supra). The roving inquiry is unwarranted while disposing of application under Section 17-B of ID Act.

14. In view of the facts and circumstances of the case, the petitioner/management is directed to pay to the workmen/respondent no.1, 2 & 3 the wages equivalent to the last drawn wages from the date of the Award i.e. 05.10.2007. The petitioner is directed to continue to pay such wages at such rate during the pendency of these proceedings on or before 10th of each succeeding English calendar month starting from February, 2018. The petitioner is also directed to pay to the respondents no.1, 2 and 3, the arrears of such wages within 08 weeks from today. The respondents shall not be entitled to wages for 445 days as stated by the learned counsel for the respondents on 14.02.2014 in the court. However, the respondents no.1, 2 & 3 are directed to file their respective undertakings by way of affidavits within four weeks that in the event of this court deciding the writ petition in favour of the petitioner, they shall refund to the petitioner any amount paid to them in terms of the present order over and above the amount they were drawing at the time of their termination.

15. The applications are disposed of accordingly in above terms.