

(2007) 11 GUJ CK 0037

In the Gujarat High Court

Case No : Civil Application - For Orders No. 12407 of 2007 in Special Civil
Application No. 8063 of 2004

Anwar Hussain Satar and Others

APPELLANT

Vs

Gujarat Maritime Board and Others

RESPONDENT

Date of Decision : 22-11-2007

Acts Referred:

Constitution of India, 1950 — Article 12, 136, 21, 226
Industrial Disputes Act, 1947 — Section 17B, 33, 33(2)
Industrial Employment (Standing Orders) Act, 1946 — Section 10A

Citation : (2008) 1 GLH 34

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Vasavdatta Bhatt, for Petitioners 1-15, 15.2.2, 15.2.3 and 15.2.4,
for the Appellant; Trivedi and Gupta for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

H.K. Rathod, J.—Rule. Service of rule is waived by learned Advocate Mr. Nayak on behalf of M/s. Trivedi & Gupta for the original petitioner. In the peculiar facts and circumstances of the case and with consent of both the learned Advocates, the matter is taken up for final hearing.

2. Heard Mrs. Vasavdatta Bhatt for the applicants original respondents - workmen and Mr. Nayak, learned Advocate for M/s. Trivedi & Gupta for the present opponents-original petitioners-employer.

3. In the main matter being Special Civil Application NO. 8063 of 2004, the petitioners are challenging the award made by the Industrial Tribunal, Rajkot in Reference (IT) NO. 160 of 1991 dated 29th November, 2003 wherein the Industrial Tribunal Rajkot has partly allowed reference and granted reinstatement in favour of the present applicants being Safai Kamdar on the basis of original seniority of the year 1982 and not granted any amount of back wages for an interim period. Services of the present applicants were terminated on 30.9.1988

against which the reference was made by the appropriate Government on 8th August, 1991. In the main matter, rule was issued by this Court and initially ad interim relief in terms of para 9(C) was granted on 13.7.04 which was subsequently confirmed by this Court on 14.12.2004 subject to compliance of 7B of the ID Act, 1947 by the petitioner Board. Accordingly, affidavit in reply was filed by the respondents No. 1 to 15 and specific averments were made by the respondents that they are prepared to work as they are not employed in any establishment and they are also not gainfully employed and, therefore, are entitled for the benefit of Section 17B of the ID Act, 1947. On the basis of the averments made by the respondents in the affidavit in reply, benefit of Section 17B of the ID Act, 1947 was extended in their favour by the petitioner in terms of the order passed by this Court in CA No. 7398 to 7404 of 2005 dated 18.8.2005. Original petitioner was directed by this Court to regularly pay wages u/s 17B of the ID Act to the respondents till the final disposal of the main special civil application. Directions were issued by this Court that the benefit of Section 17B of the ID Act, 1947 should have to be given to the respondents with effect from 1st May, 2004. Through present civil application, the applicants original respondents are claiming current wages from the original petitioner.

4. Learned Advocate Mrs. Bhatt submitted that the applicants are getting only last drawn monthly wages from the original petitioner regularly. She submits that out of fifteen employees, two have already expired during the pendency of proceedings and their family is not able to get anything from the original petitioner. This application is filed for getting current wages on the basis of the fact that they are getting last drawn wages of Rs. 673/- for the month consisting 31 days and Rs. 651/- for the month consisting 30 days which are the wages of the year 1988 and are too low. She also submits that the permanent employees of the petitioner Board are getting Rs. 6621/- per month as current wages out of which Rs. 840/- is being deducted and net current wages would come to Rs. 5781/- per month. As per her submission, amount of Rs. 673/651 per month as last drawn wages u/s 17B of the ID Act, 1947 is too low to survive and, therefore, in such a meagre amount, the applicants are not able to maintain their family. Families of the applicants are facing serious hardships and because of the insufficient fund, it is difficult for the applicants to maintain themselves and their families and they have to virtually live in a starving condition and, therefore, she has prayed for directing the petitioner to pay current wages to the applicants.

5. Affidavit in reply has been filed to this civil application by the original petitioners. One Assistant Labour Officer of the petitioner has filed affidavit in reply opposing the application on various grounds. It has been contended that the application is barred by the principles of res judicata as, at the relevant time, such prayer was not made. As per the submissions made in the reply to this application, industrial tribunal has not granted permanency in favour of the applicants and, therefore, prayers made by the applicants through this civil application cannot be granted and such type of application is not maintainable in law and the applicants are not entitled for such relief as prayed for in this

application.

6. Learned Advocate Mr. KB Nayak appearing for M/s. Trivedi & Gupta for the original petitioners has while opposing the present application, submitted that at the relevant point of time, present applicants original workmen were engaged by the petitioner on daily wage basis during the construction of Bedi Port as and when some additional man power was required due to over burdening of work. As per his submission, construction work has been over and now there is no need to have any other employees by the petitioner. As per his submission, the tribunal has directed the petitioner to reinstate the workmen as and when the work is available and the Tribunal has not granted any benefit of permanency in favour of the applicants. He also submits that the ad interim relief granted earlier by this Court has been confirmed by this Court after hearing the learned Advocate for the applicants and, therefore, this being by parte order, therefore, now, such type of application cannot be entertained by this Court. In support of his submissions, he has relied upon the decision of this Court in case of Navinchandra Laxmidas Mandavia v. State of Gujarat and Ors. reported in 1999 Lab. IC 3730, para 6 and 8 in particular and submitted that in view of the said decision, relief sought by the applicants through this civil application cannot be granted.

7. He also submits that there is no possibility to reinstate the applicants in service and the financial condition of the petitioner Board is also not good. He relied upon the aforesaid decision of this Court and pointed out that the expression of last drawn monthly wages as per Section 17B of the ID Act, 1947 cannot be extended by construing the same as minimum wages or the regular salary to be paid to the concerned employee. As per his submission, full wages last drawn means the wages drawn by the workman on the date of termination order received by the concerned workman and same is to be paid to the workman u/s 17B of the ID Act, 1947. Except these submissions and the decision of this Court as referred to above, no other submissions were made by Mr. Nayak and no other decision was cited by him before this Court.

8. I have considered the submissions made by the learned Advocates for the parties. Looking to the facts which are not in dispute between the parties, at present, the applicants are the employees getting only Rs. 673.00/651.00 depending upon the working days of each month. Services of the present applicants were terminated in the year 1988 and the award of reinstatement has been passed in their favour by the tribunal on 29th November, 2003. Present civil application has been filed by the applicants with a prayer to grant current wages for enabling them to survive in these days when the prices are going to climb the sky as they are getting the wages drawn by them in the year 1988 at the time of termination of their services by the employer. Therefore, applicants are claiming current wages so that they can maintain themselves and their families and live in the society with status and dignity.

9. Purpose behind granting such benefit of Section 17B of the ID Act, 1947 is to

see that the family of such workman must subsist during the pendency of the proceedings filed by the employer before the higher forum. That is the purpose behind to grant some benefits if the employer wants to challenge the award of reinstatement before the higher forum and such benefits u/s 17B of the ID Act, 1947 are not refundable to the employer by the concerned workman. Now let us examine whether this purpose is served or not in light of the facts of the present case. Services of the present applicants were terminated in the year 1988 and award of their reinstatement has been passed by the tribunal in the year 2003 on 29th November, 2003 and the salary last drawn by the applicants has been received by the applicants as last drawn wages which they are receiving in the year 2007 and they have to face the present situation for maintaining their families with the meagre amount received by them as last drawn wages. According to my opinion, in a small amount of Rs. 673.00/651.00, even one person cannot maintain himself with status and dignity and, therefore, it is clear that it is next to impossible for a person to maintain himself and his family with such a small amount with status and dignity. This Court, while examining such matters, cannot ignore hard realities. Technicalities cannot hijack the rhythm of divine justice. Keeping the facts of the present case in mind, I have considered the decision which is relied upon by learned Advocate Shri Nayak, in *Navinchandra Laxmidas Mandavia v. State of Gujarat* and Ors. reported in 1999 Lab. IC 3730. In para 6 and 8 of the said decision, it has been observed by this Court as under:

6. It is required to be noted that in the case of *Dena Bank v. Kiritkumar T. Patel* AIR 1998 SC 511, the Apex Court interpreted the expression "full wages last drawn" appearing in Section 17B of the Industrial Disputes Act, 1947 and pointed out that the words cannot be read as "full wages which would have been drawn". Such extended meaning to the words "full wages last drawn" does not find support in the language of Section 17B. Nor can this extended meaning be based on the object underlying the enactment of Section 17B. Section 17B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the award of a Labour Court or the Industrial Tribunal during the pendency of proceedings in which the said award is under challenge before the High Court or the Apex Court. The object underlying the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or the Supreme Court. Since the payment is of such a character, 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". To read these words to mean wages which would have been drawn by the workman if he had continued in service, if the order terminating his services had not been passed, since it has been set aside by the award of the

Labour Court or Industrial Tribunal, would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is under challenge. Since the amount is not refundable or recoverable in the event of the award being set aside it would result in the employer being required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. The provision contained in Section 17B cannot be construed as casting such a burden on the employer. The words "full wages last drawn" must be given their plain and material meaning and cannot be given the extended meaning.

8. Learned advocate for the appellant submits that since the appellant is reinstated in service there is no question of invoking the provisions of Section 17B of the Industrial Disputes Act. According to her, once the workman is reinstated, he is entitled to wages at least as provided under the Minimum Wages Act. We find fallacy in the submission, because reinstatement is not merely because of the order passed by the Labour Court or Tribunal, but the reinstatement is subject to the provisions contained in Section 17B as it is made clear by the Court while admitting the petition and the said order, not having been challenged, still holds the field.

10. I fully agree with the decision relied upon by the learned Advocate Mr. Nayak wherein Section 17B of the ID Act, 1947 is interpreted but this Court is having power under Article 226 of the Constitution of India to grant current wages if the circumstances of the case is justifying the same. But while granting current wages or regular wages, safe guard can be put by this Court for the employer for refunding of the difference of such current wages or regular wages and the full wages last drawn by the workman in case if the employer ultimately succeeds in the proceedings before the higher forum and the award of reinstatement is set aside by the higher forum. With such safe guard, this Court in exercise of the powers under Article 226 of the Constitution of India, this Court can grant the wages higher than the wages available to workman u/s 17B of the ID Act, 1947. In the case before hand, workmen are receiving Rs. 673/651 as benefit of Section 17B of the ID Act, 1947 and with such small amount, in the year 2007, it is not possible to survive with human dignity and status and such hard reality cannot be over looked by this Court while examining such matters. When specifically asked by this Court as to whether the petitioner is prepared to reinstate the present applicants in service subject to ultimate out come of the petition, learned Advocate Mr. Nayak clearly submitted that the reinstatement is not possible though applicants are ready and willing to join if they are engaged by the petitioner board. So, there is inability to reinstate the applicants and yet petitioner, Gujarat Maritime Board, an authority of the State within the meaning of Article 12 of the Constitution of India is showing unwillingness to reinstate the applicants subject to final out come of the petition and also to pay sufficient wages as benefit u/s 17B of the ID Act, 1947. Petitioner Board being the authority of the State within the meaning of Article 12 of the Constitution of

India is supposed to be reasonable and fair and it is not proper for the State Authority to take advantage of the legal situation by raising technical contention that the applicants are not entitled to any further higher amount because law is not permitting to grant such amount. Applicants whose services were terminated in the year 1988 are, after the award of reinstatement in their favour, are receiving the small amount of Rs. 673/651 in the year 2007 as benefit u/s 17B of the ID Act, 1947 for the purpose of their livelihood since award of reinstatement has been passed in 2003 not executed due to operation of stay against the same. Matter is pending before this Court. When it would come for final disposal and when it would be disposed of finally not certain and the applicants have to survive with such small amount which if permitted to be continued, would amount to mockery of a poor workmen. Industrial Tribunal set aside the termination of the year 1988 in the year 2003. From the date of termination, more than 19 years have passed and the daily wagers safai kamdars are facing problem of livelihood against the mighty litigant namely Gujarat Maritime Board for more than 19 years to get mere job and that too only as a daily wage and not as a permanent employee. What would be the fate of such poor employees those who are always meant to suffer because they do not have any other means to get justice by any other mode and they should have to see only the door of the Court because they are not able to get justice by adopting any other means. These are the hard realities which cannot be ignored by this Court and these are the hard realities which cannot be visualized by the highly reputed officers of the petitioner board those who are working in the AC Chambers enjoying all the facilities and suggestion made by this Court to learned Advocate Mr. KB Nayak has been negated by the petitioner board and they are not knowing how the poor employees are living in the society because they are having all kind of equipments, facilities and enjoying life with family and for such poor employees, they are not having any type of botheration in life and they are not able to share the feeling of miseries and pains of such poor employees and it is very easy to read the Ved by any person but it is very difficult to read pains and miseries of any person and for that, such kind of heart is necessary. Such kind of feelings are necessary to touch the heart of any person. This aspect has been examined by the Bombay High Court in Standard Chartered Grindlays Bank Ltd. Vs. Govind Phopale and Another, observed as under in para 17 and 18:

17. I need not stress the fact that wage is the real content of the Article 21. If we were to take out the wage content from this Article 21 it would be reduced to a dead letter not worth even for a decoration. In absence of the source of livelihood which is protected by Article 21, the other fundamental rights would sound hollow and empty words and would collapse in no time as a dilapidated house. The workman and his family should not be made to strave merely on the pretext that proceedings u/s 33(2)(b) for approval of the action taken by employer is pending though he is told by law that the jural relationship continues and he still carries the label that he is an employee of the applicant employer before the Tribunal. This jural sense of employment must put bread in his empty

belly. He cannot be denied the wage content of his jural relationship by drawing a fine distinction of law point that he has factually ceased to be in employment as the employer has already passed an order of dismissal/discharge though he still continues to be in the employment of the employer in law. In the case of Fakirbhai Fulabhai Solanki Vs. Presiding Officer and Another, the Supreme Court was very much conscious of the delay in disposal of discharge/dismissal matters where the workmen concerned needed relief very badly. The Supreme Court has therefore considering the crucial aspect of the delay has given a great solace to the working class whose fate is covered u/s 33 of the Act as a whole not to be subdivided by the sub-sections.

18. The aforesaid discussion is the essence of the wisdom which I have drawn from the following a new recent judgments of the Supreme Court. I am not quoting the quotable quotes from the said judgments to state what is very well known and well established needing no elaboration.

C.E.S.E. Ltd. v. Subhash Chandra Bose in para 13 at pages 355 and 356 [1992 (64) FLR 248 (SC)]

...The right to social justice is a fundamental right. Right to livelihood springs from the right to life. Guaranteed under Article 21. The health and strength of a worker is an integral facet of right to life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means. To the tillers of the soil, wage earners labourers, wood cutters, rickshaw pullers, scavengers, and hut dwellers the civil and political rights are "mere cosmetic" rights. Socio economic and cultural rights are their mean and relevant to them to realize the basic aspirations of meaningful right to life. The universal declaration of human rights international convention of economy social and cultural rights, recognize their needs which include right to food, clothing, housing, education , right to work, leisure, fair wages, descent working conditions, social security, right to physical or mental health, protection of their families as integral part of right to life. Our Constitution in the Preamble and Part IV reinforce them compendiously as socio economic justice. The bed rock to an egalitarian social order. The right to social and economic justice is thus fundamental right.

11. In para 19 of the said judgment, it has further been observed as under:

The Tribunal has rightly touched Article 21. I have merely tried to explain the idea briefly. Every legislation touching the question of livelihood or employment must yield to Article 21 of the Constitution of India. It gives freedom from starvation. The ratio of Fakirbhai (supra) read with Jaipur Jilla (vide supra) unequivocally declares that all such workmen concerned u/s 33 of the ID Act shall not starve but shall have to live to outlive the litigation.

12. Matter at issue has been examined by this Court in Mehsana District Coop.

Milk Producers Union Ltd. v. Ganeshbhai M. Chaudhary reported in 2001 (1) GLH 14. It has been observed as under while considering the decision of the apex court reported in Dena Bank v. Kiritkumar T. Patel reported in 1997 (2) SCC 996:

Heard learned advocate Mr. Mehta for the petitioner and Mr. Jani for the respondent workman.

Rule. Ad-interim relief interim of para 22(B) on a condition that the petitioner shall pay full current wages revised from time to time, of the post on which the respondent was working on the date of termination with effect from 3rd November, 1999 till 30th April, 2000 within four weeks from today and the petitioner is further directed to pay such current wages to the respondent regularly during the pendency of this petition on each month. The respondent is also directed to file affidavit of unemployment within two weeks from today and is also directed to serve copy of such affidavit to the petitioner herein.

Learned advocate Mr. Mehta has submitted that according to the provisions of Section 17B of the Industrial Disputes Act, 1947, the petitioner is prepared to pay the full wages last drawn by the respondent workman. However, considering the merits of the matter, when there is no clear findings given by the inquiry officer against the respondent workman and also taking into consideration the length of 25 years' service put in by the respondent workman, I am of the opinion that the direction to pay full wages last drawn by the respondent workman will not serve the purpose because the petitioner wants stay against the implementation of reinstatement of the workman. Therefore, considering the decision of the apex court in case of Dena Bank v. Kiritkumar T. Patel reported in 1997(2) 996, wherein, as regards the powers of the High court and Supreme Court under Article 226 and 136 of the Constitution of India, has observed that in a petition involving challenge to the award of the labour court or industrial tribunal or national tribunal in the high court or the supreme court, it has been observed that the high court or the supreme court is not precluded from passing order directing the payment of higher amount if such higher amount is considered necessary in the interest of justice. In the said decision, it was observed that Section 17B conferred right on the workman to be paid the amount of full wages last drawn by him during the pendency of the petition involving challenge to the award which amount is not refundable or recoverable in the event the award is being set aside and it has been held that in such a situation, it does not preclude the high court or the supreme court to pass order directing payment of higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such direction would be dehors the provisions of Section 17B of the ID Act and the Court, while issuing such direction, may also give direction regarding refund or recovery of such higher amount in the event the award being set aside. In view of these observations made by the apex court in aforesaid decisions, the respondent is also directed to file undertaking before this Court that if, ultimately, said award is being set aside by this Court, then, the respondent will pay the difference of the salary from full

wages last drawn by him and the regular current wages received by him from the petitioner pursuant to this order. The respondent shall file such undertaking before this Court within two weeks from today. According to my opinion, the respondent herein has put in more than 25 years of service and his services were terminated on 12th July, 1989 and he has remained without job for a period of about ten years and the labour court has given detailed reasons in support of the findings arrived at by it. The labour court has also considered the findings of the inquiry officer. Prima facie, as per the findings of the labour court, it is not clear from the findings of the inquiry officer that the allegation and misconduct which has been alleged against the respondent is found to be proved against him. However these are my prima facie observations for passing such interim orders and it is made clear that the same shall not have any effect at the time of final hearing of the matter. Accordingly, the petitioner is directed to pay to the respondent full current wages revised from time to time for the post on which the respondent was working at the time of his dismissal. Such amount shall be paid by the petitioner with effect from 3rd November, 1999 to 30th April, 2000 within four weeks and thereafter, the petitioner shall continue to pay such wages to the respondent workman regularly each month during the pendency of this petition and the respondent shall file the affidavit and undertaking as aforesaid within two weeks from today.

In view of the peculiar facts and circumstances of the case, rule is made returnable on 27th June, 2000.

13. In *Regional Authority, Dena Bank, and Anr. v. Ghanshyam* reported in 2001 AIR SCW 2150, the apex court observed as under in para 9, 10, 12 and 13 as under:

9. The Statement of Objects and Reasons for inserting the said provision indicates that when Labour Courts 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 1998 AIR SCW 87 : AIR 1998 SC 11 : 1998 Lab IC 578 (supra) 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 17B of the Act does not preclude the High Courts or this Court under Article 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 Bank's case 1998 AIR 98 : AIR 1998 SC 511: 1998 Lab IC 78). The High Court or this Court may while entertaining employer's challenge to the award in its discretion, in appropriate cases stay 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 interest of justice. The Court may, depending on the facts of a case, direct payment of full wages last drawn u/s 17B 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 Court 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.

12. We have mentioned above that the import of Section 17B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the Statement of Objects and Reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17B was inserted in the Act. We have also pointed out above that Section 17B does not preclude the High Courts or this Court from granting better benefits - more just and equitable on the facts of a case than contemplated by that provision to a workman. By interim order the High Court did not grant relief in terms of Section 17B, nay, there is no reference to that section in the orders of the High Court, therefore, in this case, the question of payment of full wages last drawn to the respondent does not arise. In the light of the above discussion the power of the High Court to pass the impugned order cannot but be upheld so the respondent is entitled to his salary in terms of the said order.

13. It must however be pointed out that while passing an interlocutory order the interests of the employer should not be lost sight of. Even though the amount paid by the employer u/s 17B to the workman cannot be directed to be refunded in the event he loses the case in the writ petition, (See Dena Bank's case (supra) any amount over and above the sum payable under the said provision, has to be refunded by him It will therefore be in the interest of justice to ensure if the facts of the case so justify that payment of any amounts over and above the amount payable u/s 17B to him, is ordered to be paid on such terms and conditions as would enable the employer to recover the same.

14. In *Workmen employed under it by Shramik Sena v. Raptakos Breet & Co. Ltd.* Reported in 2007 III CLR 354, the Bombay High Court observed as under in para 4,5,8 and 9:

4. The learned advocate for the Union submits that u/s 17B of the Industrial Disputes Act, when an award in favour of a workman is challenged by the company in the High Court, the workman must be paid wages last drawn by him. He submits that the Supreme Court has interpreted that the term "last drawn wages" need not be restricted to the wages actually drawn by the workman prior to his termination from service. He submits that now it is open for this Court to grant something more than the last drawn wages.

5. He relied on the judgments in the case of *Regional Authority, Dena Bank and Anr. v. Ghanshyam* 2001 II CLR 901 of the Supreme Court, *Paramjit Singh Ahuja v. Presiding Officer, Labour Court VI and Ors.*, *Suman Lata Tuleja and Ors.* 2006 (3) LLN 1017 both of the Delhi High Court. He further submits that assuming that the workmen are employed though a contractor, which is the case of the company, the workmen of the contractor would be entitled to the same wages as are payable to the permanent workmen of the company. He relies on the judgment of the Supreme Court in the case of *Food Corporation of India v. Shyamal K. Chatterjee and Ors.* 2000 II CLR 850 and of the Division Bench of this Court in the case of *Contract Laghu Udhayog Kamgar Union v. V.G. Mohite, Assistant Labour Commissioner, Thane and Ors.* 2001 II CLR 1011. The learned advocate then submits that in any event the workmen must be paid wages which would sustain them through the protected litigation that they have to face.

8. However, whether the workmen should be granted anything more than Rs. 2500/- will have to be considered. There is no doubt that in the case of *Dena Bank (Supara)*, the Supreme Court has observed that while passing the interlocutory order, an amount more than the last drawn wages can be awarded u/s 17B. However, the Supreme Court cautions that when such wages are directed to be paid which are higher than the full wages last drawn, it is necessary to bear the interest of both the parties in mind as the amount paid as wages u/s 17B is not to be refunded to the employer and in the event the employer succeeds there would be no security for him to recover that amount. The Supreme Court has observed thus:

We have mentioned above that the import of Section 17B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the Statement of the Objects and Reasons of the Industrial Disputes (Amendment) Act, 1982, by which Section 17B was inserted in the Act. We have also pointed out above that Section 17B does not preclude the High Courts or this Court from granting better benefits more just and equitable on the facts of a case than contemplated by that provision to a workman. By Interim order the High Court did not grant relief in terms of Section 17B, nay, there is no reference to that section in the orders of the High Court, therefore, in this case the

question of payment of "full wages last drawn" to the respondent does not arise. In the light of the above discussion the power of the High Court to pass the impugned order cannot but be upheld so the respondent is entitled to his salary in terms of the said order.

It must, however, be pointed out that while passing an interlocutory order the interest of the employer should not be lost sight of. Even though the amount paid by the employer u/s 17B to the workman cannot be directed to be refunded in the even he loses the case in the writ petition (see Dena Bank's case 1998 I CLR 191 SC : (1998) 92 FLR 309) any amount over and above the sum payable under the said provision, has to be refunded by him. It will, therefore, be in the interest of justice to ensure, if the facts of the case so justify, that payment of any amounts over and above the amount payable u/s 17B to him, is ordered to be paid on such terms and conditions as would enable the employer to recover the same.

9. The Delhi High Court in the aforesaid cases has also held that wages which could be paid u/s 17B are the last drawn wages by him which should not be less than the minimum wages applicable from time to time. Thus, keeping in mind these judgments, it must be held that an employee claiming wages payable u/s 17B of the Act must be paid wages which are not less than the minimum wages payable when the order on an application u/s 17B is passed. The only question is if the last drawn wages are less than the minimum wages payable is the employer required to be protected in any manner. In my opinion, the last drawn wages would mean at least the statutory minimum wages payable. Therefore, there is no need to protect the employer by insisting on a security from the workman where only the statutory minimum wages are being paid as wages u/s 17B.

In Food Craft Instt. v. Rameshwar Sharma and Anr. reported in 2007-II-LLJ Delhi, following observations have been made by the Delhi High Court at page 351:

Law's delay, one of the ills that flesh is heir to, occasioned the elaborate discussion in this judgment with precedents cited and interpretation given, defining the scope of the High Court's power to grant relief to workmen, who did not get the relief awarded by the Labour Court, because the management (employer) continued the litigation in the High Court challenging the award through writ petitions. The crux of the matter in these applications of the workmen u/s 17B of the Industrial Disputes Act, 1947 was whether the High Court could grant wages as interim relief on terms beyond the parameters of Section 17B. The High Court held it could do so.

Held: The High Court observed the respondent/workman had established that the amount that was being paid to him (under earlier order dated November 8, 2001) was grossly insufficient and deserved to be enhanced. The wages notified by the authorities from time to time under Minimum Wages Act, 1948, was a

reasonable index of the wages which should be admissible to the workman during the pendency of the litigation.

Thereafter, it has been observed as under in para 27, 28, 66, 67, 76, 77,86,87 104 and 105 of the said judgment:

27. It has been held that this Court under Article 226 has the jurisdiction to grant wages beyond the limits u/s 17B. There is no dispute that this Court was competent to, albeit under Article 226 of the Constitution of India, to grant interim relief beyond the parameters set down by Section 17B. This being the position, the jurisdiction and the power to grant wages in excess of last drawn wages exists.

28. Learned Counsel for the workmen-applicants have submitted that the Industrial disputes remain pending before Industrial Adjudicator for over decades. The wages last drawn by the workman are rendered meaningless in the context of subsistence of the workman concerned as the cost of living index and inflation escalates. It has been contended that looked at from any angle, the only relevant index of what would be fair and just wages would be the assessment by the competent authority under the Minimum Wages Act, 1972 of the minimum wages to which a workman would be entitled.

66. Now, by way of the present application, the applicant/respondent has contended that by virtue of this order, the workman is being paid a pittance of Rs. 1529/- as monthly wages last drawn which is wholly insufficient for even the bare day to day minimum expenses. Contending that this amount is even below the minimum wages statutorily fixed by the Government of NCT of Delhi, the applicant submits that it is opposed to all canons of justice and frustrates the entire purpose of awarding wages as an interim relief. On these submissions, the applicant has sought the following reliefs:

(i) Direct the petitioner/management to pay wages to the respondent/workman at the rate of the present minimum wages fixed by the Government of N.C.T.

(ii) Pass any such Order (sic) or further order as this Hon''ble Court may deem fit and proper in the circumstances of the present case.

67. The application has been vehemently opposed on behalf of the petitioner who has contended that no order directing payment of any amount higher than the full wages last drawn can be granted to a workman as an interim relief. An objection has been taken to the effect that the workman has not filed an affidavit that he is not gainfully employed.

76. I have given my considered thought to the submissions made before me and the available record. The law applicable to the grant of wages is well settled. It has been authoritatively held in the pronouncements noticed herein that there is no restriction on the High Court which is granting relief as an interim measure during the pendency of a challenge by the management to an award directing reinstatement of the workman. It is also settled law that the minimum wages

notified by the statutory authorities from time-to-time gives a fair index of the wages which should be paid to workman pendente lite.

77. During the course of submissions, it was pointed out by learned senior counsel for the petitioner that the services of the respondent/workman were terminated as back as on February 15, 1988 on which date he was drawing wages of only Rs. 1529/- It is also not disputed that the litigation has remained pending ever since and that such amount is grossly insufficient to eke out a bare living. It was also fairly admitted that such an amount is below the minimum wages notified by the statutory authorities from time-to-time. So far as the submission based on the Industrial Employment (Standing Order) Act, 1946 is concerned, I find that Section 10A of the Industrial Employment (Standing Orders) Act, 1946 itself provides for payment of subsistence allowance at the rate of 50% of the wages immediately preceding the date of such suspension for the first 90 days and thereafter at the rate of 75% on satisfaction of the notified stipulations. Further, on close reading of the pronouncement of the Division Bench in *Fouress Engineering (India) (Pvt.) Ltd. v. Delhi Administration* (supra), shows that in this case the Division Bench held thus *Fouress Engineering (I) Pvt. Ltd. Vs. Delhi Administration and Others*,

7. This Section 17B, relates to the period during which proceedings remain pending before the High Court or the Supreme Court, it does not take into account any period to the preferring of the proceedings in the High Court or the Supreme Court. During the pendency of proceedings, the employer is under obligation to pay full back wages last drawn by the employee.

8. ...

9. From a perusal of the above passage it may appear that even for back wages Section 17B makes a provision. However as already considered above, Section 17B does not deal with the period prior to the preferring of proceedings before High Court or Supreme Court.

10. ...

11. In our opinion, the Court could have passed such an order with respect to back wages or arrears payable by the employer to the employee without taking recourse to Section 17B. There is no dispute that back wages drawn by respondent No. 3 were @ Rs. 615/- per month.

86. So far as the prayer for award of wages pendente lite is concerned, I find respondent/workman has established that the amount being paid to him is insufficient and deserves to be enhanced. The parties have not placed any fair amount which could have been granted to the respondent/workman other than the reliance on the statutory notifications under the Minimum Wages Act, 1948. In my view, the wages notified by the authorities from time-to-time under the Wages Act, 1948 is a reasonable and fair index of the wages which should be admissible to the respondent/workman during the pendency of the litigation. The

same is in consonance with the binding principles laid down by the Apex Court and this Court noticed hereinabove by which this Court is bound.

87. Accordingly, this application is allowed. The order dated November 8, 2001 is modified to the extent that the respondent/workman shall be paid wages from the date of filing of the writ petition at a rate whichever is higher of the two rates between the last drawn wages and the minimum wages notified by the statutory authorities from time-to-time. The respondent/workman shall file an undertaking in this Court within one week from today setting out his latest address and undertaking to this Court that in the event of the writ petition being allowed, he shall be liable to reimburse to the petitioner the differential of the amount of the wages last drawn and the minimum wages notified by the authorities from time-to-time. Arrears in terms of the orders passed today shall be paid to the respondent/workman at the address disclosed in his undertaking within a period of four weeks. Month by month wages in terms of this order shall be paid to the respondent/workman on or before the 7th of each English calendar month at the same address.

C.M. No. 5169/2004 in Writ Petition (Civil) 52/1997.

104. I have noticed hereinabove the jurisdiction of the High Court in exercise of its extraordinary powers under Article 226 of the Constitution of India whereby it has the jurisdiction to award or grant interim wages de hors Section 17B of the Industrial Disputes Act. I have also noticed and held that there is no prohibition on this Court in granting wages with effect from the date of the award and that the minimum wages notified by the statutory authorities from time-to-time is a fair index of the amount which the management should be directed to pay to the workman.

108. The petitioner is accordingly directed to make payment of wages to the respondent No. 3 at the rate, whichever is higher, between the last drawn wages and the minimum wages which are notified by the authorities from time-to-time. The arrears of the wages at this rate shall be paid to the respondent/workman at the address disclosed in his affidavit filed in support of the application within a period of four weeks from today. Month by month wages in terms of the order passed today shall be paid to the workman at the same address on or before the 7th of each English Calendar month. This application is allowed in the above terms.

15. In *Confederation of Ex-Servicemen Association and Ors. v. Union of India and Ors.* reported in (2006) 8 SCC 399, the apex court observed as under in para 61:

61. It cannot be gainsaid that the right to life guaranteed under Article 21 of the Constitution embraces within its sweep not only physical existence but the quality of life. If any statutory provision runs counter to such a right, it must be held unconstitutional and ultra vires Part III of the Constitution. Before more than hundred years, in *Munn v. Illinois* 94 UC 113 : 24 L ED 77 (1877), Field, J. explained the scope of the words "life" and "liberty" in the 5th and 14th

amendments to the US Constitution and proclaimed: (US p. 142)

By the term "life", as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world....

By the term "liberty", as used in the provision, something more is meant than mere freedom from physical restraint or the bounds of a prison.

16. Considering the aforesaid decisions, question was discussed in light of passage of time whether last drawn wages can be increased by the High Court while exercising powers under Article 226 of the Constitution of India or not or whether it is sufficient to continue the workman in last drawn wages only in which employee concerned is not able to maintain the family. View taken by the apex court in case of Dena Bank is recognizing the powers of this Court to grant higher wages subject to condition to refund back the amount of difference between last drawn wages and higher wages in case if concerned employer succeeds in the proceedings before the higher forum. In Mehsana Cooperative Society, this Court has taken the same view and granted higher wages in favour of the concerned employee while exercising powers under Article 226 of the Constitution of India. Said decision was challenged before the Division Bench of this Court by filing Letters Patent Appeal which was dismissed by the Division Bench of this Court while confirming the decision of this Court. Not only that but the decision was challenged before the apex court and the apex court also confirmed the decision of this Court granting higher wages to the concerned employee on a condition to refund the amount of difference between the higher wages and the amount available as last drawn wages. Therefore, such powers of this Court have been recognized by the apex court and thus, provisions u/s 17B of the ID Act, 1947 cannot curtail the powers of this Court to grant higher wages in such cases in exercise of the powers under Article 226 of the Constitution of India.

As per my view, amount of Section 17B last drawn wages which is being received by the applicants is grossly insufficient for maintenance of the applicants and their respective families and if just and fair amount of higher wages in lieu thereof is not ordered, then, applicants and their families will have to starve and to suffer. It is inadequate for maintaining families of the applicants in these hard days of price escalation when the prices are day by day going to climb the sky. Right to life includes right to livelihood guaranteed under Article 21 of the Constitution of India. If the applicants are not able to maintain livelihood with such small amount, then, in the facts of the case and in view of the decisions referred to above, this Court can exercise powers under Article 226 of the Constitution of India and can grant fair and reasonable amount of higher wages being minimum wages for enabling the applicants to maintain themselves and

their families, as an interlocutory or interim measure because it is not certain as to when the main matter of the year 2004 will be heard finally. It is more so when the petitioner is not ready to reinstate the applicants in service even subject to ultimate outcome of the main matter. Therefore, while safeguarding the interest of the employer, present application is required to be allowed by directing the applicants to refund back the amount of difference of such higher wages and the amount payable to them u/s 17B of the ID Act, 1947 i.e. Full wages last drawn by them in case if the award of reinstatement is ultimately set aside at the time of final disposal of the main matter. In this matter, more than 19 years have passed from the date of termination of their service and that is justifying their demand for higher wages in the form of minimum wages.

17. In view of the aforesaid peculiar facts of this case which are not disputed by the parties to this matter, hard reality, meagre amount received by the applicants towards benefit of Section 17B of the ID Act, 1947 with which the applicants are not able to maintain themselves with status and dignity and also considering the fact that the applicants are getting the wages received by them in the year 1988 as last drawn wages in 2007, according to my opinion, this is the proper case for granting minimum wages to the applicants as benefit u/s 17B of the ID Act, 1947 is inadequate and grossly insufficient. Therefore, I am exercising powers under Article 226 of the Constitution of India while accepting the limitations u/s 17B of the ID Act, 1947 because of the interpretation made by this Court and this Court can grant higher wages with some condition for safeguarding the interest of employer in the event employer ultimately succeeds in the matter and the award of reinstatement is set aside by the higher forum. Therefore, according to my opinion, the applicants are entitled for higher wages from the petitioner board. What is the meaning of higher wages, whether the wages of permanent employee could be considered as higher wages or the wages available under the Minimum Wages Act could be considered as higher wages in the facts of this case is the question for consideration of this Court. According to my opinion, applicants were working as daily wagers prior to termination of their services and termination of applicants has been set aside by the industrial tribunal and therefore, after reinstatement, their status would be that of daily wager and, therefore, in view of these facts, according to my opinion, applicants should be granted minimum wages as higher wages because the wages received now by the applicants as last drawn wages is very lesser than the minimum wages, therefore, according to my opinion, applicants are entitled for the minimum wages prescribed by the State of Gujarat for the category of industry where the applicants were working with the petitioner and that can be granted by this Court in their favour and not the regular wages or the wages which are received by permanent employees under the petitioner.

18. Therefore, it is directed to the petitioner to pay present/current minimum wages as specified by the State of Gujarat in notification for unskilled workmen with DA as revised from time to time to the concerned employees i.e. Present applicants excepting two employees at Sr. No. 11 and 15, those who have

expired during the pendency of proceedings with effect from 1st September, 2007. Applicants shall have to file undertaking before this Court that in case if the petitioner Board ultimately succeeds in the main matter and the award of reinstatement is set aside in these proceedings, then, they will refund the difference between higher wages and the last drawn wages as per Section 17B of the ID Act, 1947 to the petitioner as per the directions that may be issued in these proceedings by this Court while disposing of the main matter at the time of final hearing. Such undertaking will be filed by the applicants individually before this Court within fifteen days from today and copy of such undertaking will have to be supplied by the applicants individually to Shri Nayak, learned advocate for M/s. Trivedi & Gupta for the petitioner Board through learned Advocate Mrs. Vasavdatta Bhatt for the applicants and thereafter, petitioner shall have to pay within fifteen days the difference between last drawn wages paid to the applicants and the present/current minimum wages of unskilled category with DA as revised from time to time from 1st September, 2007 to 30th November, 2007 to the applicants within fifteen days and thereafter petitioner board shall have to regularly pay such minimum wages as directed by this Court to the applicants workmen from 1st December, 2007 till the main matter is finally heard and decided by this Court. This order has been passed by this Court subject to final outcome of the present proceedings. While passing these orders, this Court has not imposed any condition on the applicants to give security looking to their too poor condition. The applicants are too poor to give any such security for the difference of amount.

19. With these observations and directions, this Civil Application is allowed. Rule is made absolute in terms indicated herein above with no order as to costs.