

(2019) 11 DEL CK 0101

In the Delhi High Court

Case No : Letters Patent Appeal No. 506 Of 2019

B N Singh

APPELLANT

Vs

M/S Hindustan Antibiotics Limited

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2019) 11 DEL CK 0101

Hon'ble Judges : Vipin Sanghi, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Debasish Moitra, Shreyan Dutta

Final Decision : Disposed Of

Judgement

Vipin Sanghi, J

1. We have heard the appellant, who is present in person, as well as learned counsel for the respondent. The present Letters Patent Appeal is directed against the order dated 24.04.2019, passed by the learned Single Judge in C.M. No. 16947/2018 in W.P.(C.) No. 8297/2016. The learned Single Judge has disposed of the said Civil Miscellaneous Application preferred by the appellant under Section 17B of the Industrial Disputes Act, who is the respondent in the aforesaid writ petition.

2. The appellant, who was employed with the respondent, was removed from service with effect from 14.10.2009. He raised an industrial dispute and the Labour Court passed an industrial award in his favour directing his reinstatement while finding his termination to be illegal. The respondent, which is a Government owned Company, has preferred the aforesaid writ petition to assail the industrial award directing reinstatement of the appellant.

3. The appellant, upon service in the writ proceedings, filed an application under Section 17 B of the Industrial Disputes Act i.e. C.M. No. 16947/2018 to claim the last drawn wages during pendency of the writ proceedings. It appears that he

failed to file an affidavit in support of the application. Vide order dated 25.02.2019, the learned Single Judge noted the said objection raised by the respondent herein, and granted 2 days time to the appellant to file the affidavit in support of the application along with the documents to show his last drawn wages. Accordingly, the appellant filed his affidavit dated 26.02.2019, wherein he, inter alia stated:

"1. That I was an employee of M/s Hindustan Antibiotics Ltd Pimpri Pune and my service record No is 4464.

2. That I was removed from service w.e.f. 14.10.2009.

3. That w.e.f. 14.10.2009 I remain unemployed and even presently not employed anywhere.

4. That I was getting gross earnings of 18080.61 (Rs eighteen thousand eighty and paise sixty one only) in September 2009 from M/s Hindustan Antibiotics Ltd Pimpri Pune.

5. That learned labour Court No XVII Delhi in I.D Case No 207/16/10 passed award on 2.2.2016 for reinstatement and 100% back wages.

6. That in Sept.2009 VDA (variable dearness allowance) rate was only 100%."

4. He also annexed with the said affidavit his salary slip evidencing the pay drawn by him for the month of September, 2009.

5. The learned Single Judge, while allowing the application, took notice of the decision of the Supreme Court in Uttaranchal Forest Development Corporation v. K.B. Singh, (2005) 11 SCC 449. The learned Single Judge observed that in the light of the said decision "the workman shall be entitled for wages under Section 17B from the date of filing of the affidavit." The learned Single Judge noted that the application under Section 17B was filed on 07.07.2017. However, the affidavit in support of the said application was filed by the appellant only on 26.02.2019 in which he stated that he was unemployed since the date of his removal from service i.e. 14.10.2009. The learned Single Judge granted wages to the appellant under Section 17B "with effect from the date of filing of the affidavit" i.e. 26.02.2019.

6. The grievance of the appellant, who appears in person, is that under Section 17B, he was entitled to payment of the last drawn wages from the date of institution of the writ proceedings by the respondent in this Court to assail the industrial award in his favour, and merely because the affidavit in support of the application in terms of Section 17B was filed on 26.02.2019, the date from which he was entitled to receive the last drawn wages was not postponed to the said date. He submits that the learned Single Judge has wrongly read and interpreted the decision of the Supreme Court in Uttaranchal Forest Development Corporation (supra).

7. We have heard the appellant as well as the counsel for the respondent and

also perused Section 17B of the Industrial Disputes Act and the decision of the Supreme Court aforesaid. Section 17B of the Industrial Disputes Act, reads as follows:

"Section 17B. Payment of full wages to workman pending proceedings in higher courts.

Where in any case, a Labour Court, 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." (emphasis supplied)

8. In paragraph 3 of the decision of the Supreme Court in Uttaranchal Forest Development Corporation (supra), the Supreme Court has observed as follows:

"3. After hearing learned counsel for the parties, we direct 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 of their terminations from services. 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 Industrial Disputes Act, 1947"(emphasis supplied)

9. A reading of Section 17B shows that when an award made by the Labour Court, Tribunal or National Tribunal directs reinstatement of any workman, and such an award is assailed before the High Court, or the Supreme Court by the employer, the workman is entitled to seek, during the pendency of such proceedings in the High Court, or the Supreme Court, the full wages last drawn by him, inclusive of any maintenance allowance admissible to him under the Rules. This is subject to the condition that he should not have been employed in any establishment during such period. For this purpose, he is required to file an affidavit stating that he had not been employed in any such establishment during the relevant period.

10. It is clear from the plain reading of Section 17B that the period for which the workman can claim the last drawn wages commences from the date of filing of the proceedings challenging the industrial award before the High Court, or the

Supreme Court, or as the case may be. The date of filing of the affidavit is not the starting point from when the workman would become entitled to receive the last drawn full wages. The filing of the affidavit is only a pre-condition to trigger the obligation of the employer to make payment of the last drawn wages from the date of filing of the petition in the Court, in terms of the order that the Court may pass after perusing the application and the affidavit. Even the Supreme Court has not stated in Uttaranchal Forest Development Corporation (supra) that the entitlement for such wages would be from the respective dates "of" filing of the affidavits by the workman. The Supreme Court has cautiously used the words "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 Industrial Disputes Act, 1947....." This aspect has been missed by the learned Single Judge.

11. In the light of the aforesaid, in our view, the learned Single Judge has wrongly interpreted both Section 17B of the Industrial Disputes Act, as well as the decision of the Supreme Court in Uttaranchal Forest Development Corporation (supra). We, therefore, set aside the said impugned order to the extent that it restricts the right of the appellant to receive wages under Section 17B only from 26.02.2019. The said wages would be payable from the date of filing of the writ petition, keeping in view the affidavit filed by him that he has remained unemployed since the date of his termination. The arrears shall be paid to the appellant by the respondents within the next two months.

12. The appeal stands disposed of in the aforesaid terms.