

---

**(2003) 11 JH CK 0049**  
**In the Jharkhand High Court**  
**Case No : LPA No. 63 of 2003**

Bharat Coking Coal Ltd.

APPELLANT

Vs

Their Workmen and Another

RESPONDENT

---

**Date of Decision :** 18-11-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 17B

**Citation :** (2004) 1 JCR 514 : (2004) 106 FJR 938 : (2004) 3 CLR 688 : (2004) 3 LLJ 1088

**Hon'ble Judges :** P.K. Balasubramanyan, C.J.;Tapen Sen, J

**Bench :** Division Bench

**Advocate :** A.K. Mehta, for the Appellant; A.K. Sinha, for the Respondent

**Final Decision :** Allowed

---

## Judgement

1. This appeal under Clause 10 of the Letters Patent by the management challenges the order of the learned Single Judge dated 3.12.2002 passed in WP (L) No. 5447 of 2001. That writ petition was filed by the appellant, the management, challenging an award passed by the Central Government Industrial Tribunal No. 1 at Dhanbad on a reference to it of the following questions :

"Whether the action of the management of Loyabad Colliery of M/s. BCCL, P.O. Bansjora, the services of S/Sh. Uday Nand Jha and 46 other stone cutters (as per list annexed) is justified? If not, to what relief are the concerned workmen entitled?"

The award held thus :

"The action of the management of Loyabad Colliery of M/s. BCCL in not regularizing the concerned persons as permanent employee is not justified. Consequently, they are entitled to be regularized as permanent employee of the BCCL in Loyabad Colliery and are entitled to the wages as per NCWA without back wages. They are ordered to be regularized within 30 days from the date of

publication of the Award failing which they shall be entitled to the wages as per NCWA from the date of publication of this Award."

2. The writ petition filed by the management, the appellant was admitted by a learned single Judge of this Court and on 14.11.2002 the following order was passed :

"This application will be heard.

Admit.

Since all the respondents are being represented by their respective counsel no further notice need be given to them. List in usual course."

3. In this writ petition, the respondent, the workmen, made an interim application invoking Section 17B of the Industrial Disputes Act claiming relief under that provision. The management appellant resisted that application by pointing out that the award was not one for reinstatement and hence Section 17B of the Industrial Disputes Act had no application. The learned single Judge brushed aside that objection on an order of the Supreme Court dated 6.1.1999 passed in Petition for Special Leave to Appeal (Civil) No. 8382 of 1998. The learned single Judge directed the management-petitioner to make payment to the workmen in question as per Section 17B of the Act from the date of the filing of the Writ Petition. The Interlocutory Application filed by the workmen was thus allowed. This order that is challenged in this appeal.

4. The learned Advocate General appearing on behalf of the respondent-workmen raised a preliminary objection that the appeal under Clause 10 of the Letters Patent challenging an Interlocutory order was not maintainable. We find that this question is no more res integra. Even though the Patna High Court had taken the view that an order on an application u/s 17B of the Act was not appealable, the Supreme Court, in *Employer in relation, to the Management of Central Mine Planning and Designing Institute Ltd. v. Union of India* 2001 (1) JCR 310 (SC) held that an order passed on an application u/s 17B of the Industrial Disputes Act was a "judgment" under Clause 10 of the Letters Patent and hence such an order was appealable. We have therefore, no hesitation in overruling the preliminary objection to the maintainability of the appeal raised by the learned Advocate General.

5. Section 17B of the Act has application when the award is one for reinstatement of a workman and the employer prefers any proceeding against such an award in the High Court or the Supreme Court. On the wording of Section 17B, it can have application only when the award is one for reinstatement and not in any other case. When the words of a statute are plain and unambiguous, the Court must understand the purport of the statutory provision based on the language used by the statute. This is the fundamental principle of interpretation and the other aids can be resorted to only when the words of Section 17B are not plain or are ambiguous. From a reading of the

section, there cannot be any doubt that it applies to a case of reinstatement. "Reinstatement" in industrial jurisprudence is a well known concept and is an unambiguous expression. Therefore, in a case where the award does not order for reinstatement, the High Court does not get jurisdiction u/s 17B of the Act to pass an order under that provision. Normally, the Court is not entitled to enlarge the scope of a provision when the provision is intended to cover the very situation envisaged by the statute. In fact, Court has held in the judgment in LPA No. 9/2003 that Section 17B has no application in a case where the award did not order reinstatement.

6. The learned Advocate General contended that the decision in LPA No. 9/2003 required reconsideration since this Court has not properly understood the effect of the decision of the Supreme Court in the petition for Special Leave to Appeal (Civil) No. 8382/98. According to the learned Advocate General, the dismissal of the SLP by the Supreme Court was with reasons and consequently, it cannot but be taken to be a declaration of law by the Supreme Court. In LPA No. 9/2003 this Court had occasion to consider the scope of the decision in that Special Leave Petition. This Court came to the conclusion that there was no pronouncement on law by the Supreme Court in the order passed in the petition for Special Leave to Appeal (Civil) No. 8283/98 and the order could not also be understood to as laying down the law within the meaning of Article 141 of the Constitution of India. We are not persuaded that any error was committed by this Court in the judgment in LPA No. 9/2003 which justifies a reconsideration of that decision on this aspect. We, therefore, overrule the argument of the learned Advocate General that the order of the Supreme Court has finally decided the scope of Section 17B of the Act and it is not open to this Court to depart from the view taken by the Supreme Court. On the facts of this case and following the decision in LPA No. 9/2003, we are satisfied that the learned single Judge has acted without jurisdiction in passing the order u/s 17B of the Industrial Disputes Act and in overruling the objection raised in that behalf by the appellant.

7. The learned Advocate General has argued that this Court has ample power under article 226 of the Constitution of India to pass an order directing the management to pay wages. May be in an appropriate case this Court may have that power. But from the case on hand what we find is that the operation of the award or the implementation of the award which is meant for regularization, was not stayed by this Court while admitting the writ petition. Therefore, nothing stood in the way of the workman getting the award implemented as provided under the Industrial Disputes Act. When a special statute confers a right, provides a particular remedy and provides a machinery for the working out of that remedy, normally, it is for the litigant to approach the concerned Forum for getting his right worked out. As of right, the party cannot seek the exercise of power by this Court under Article 226 of the Constitution of India in such a situation. Moreover, in the case on hand, the learned single Judge has not exercised his power under Article 226 of the Constitution of India. He has specifically proceeded on the basis that he had the power u/s 17B of the Act to

pass the order impugned in this appeal. We are, therefore, of the view that there is no merit in this contention sought to be raised by the learned Advocate General.

8. The learned Advocate General relied on the decision of the Supreme Court in AIR 1998 511 (SC) to drive home the object of enactment of Section 17B of the Act and the purpose sought to be achieved by the introduction of that section. What was involved in the Dena Bank case was an award for reinstatement and an order had been passed by a learned single Judge of the High Court in that case, u/s 17B of the Act to make payment of wages as revised including Increments, Dearness Allowance etc. The question that was involved was whether the High Court could pass such an order when Section 17B of the Act specifically spoke of "full wages last drawn". Their Lordships noticed an argument that it was not proper to limit Section 17B to the extent of wages which were drawn by the workman in question when the services were terminated. The Supreme Court noticed that the words used in the statute were "full wages last drawn". The words meant the wages which were drawn by the workman when terminated and not wages when it would have been drawn by the workman if he had continued in service if the order terminating his service had not been passed. What was envisaged by the Parliament was clear. It was not open to the Court to enlarge the scope of that relief. With respect to the advocate General, this decision, in fact supports the ratio of the decision in LPA No. 9/2003 rather than denting the reasoning adopted in that decision. We may also notice that in the Dena Bank case, the Court held that the power under Article 226 of the Constitution of India should not be exercised to deny the workman the benefit of Section 17B of the Industrial Disputes Act in the context of the fact that the award in that case had directed reinstatement and Section 17B was a statutory provision introduced for the benefit of such a workman subsequently provided with the relief referred to therein. Once we hold that Section 17B of the Act has no application and we further find that the learned single Judge has not exercised any other power, it is not possible to uphold the decision of the learned Single Judge.

9. Thus, on an anxious consideration of the relevant aspects, we are satisfied that this appeal deserves to succeed. We therefore, allow this appeal and setting aside the order of the learned single judge dated 3.12.2002 dismissed the application filed by the workmen u/s 17B of the Industrial Disputes Act. But, taking note of the situation pointed out by the learned Advocate General, we direct that the hearing of the writ petition WP (L) No. 5447 of 2001 be expedited and the same be included in the list for hearing, in the month of February, 2004.