

(2004) 11 CAL CK 0004

In the Calcutta High Court

Case No : A.P.O. No. 519 of 2004, G.A. No's. 2973 and 3446 of 2004 and W.P. No. 769 of 2004

Bidyadhar Palai and Another

APPELLANT

Vs

Loomtex Engineering Private Limited and Others

RESPONDENT

Date of Decision : 19-11-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2005) 1 CHN 625 : (2005) 106 FLR 235 : (2004) 2 ILR (Cal) 551 : (2005) 2 LLJ 294

Hon'ble Judges : Asit Kumar Bisi, J;Altamas Kabir, J

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharya, K.H. Dasan and Mala Chakraborty, Tapan Banerjee, for the Appellant; Partha Sarathi Sengupta, Soumay Mazumdar and Subhrangshu Ganguly, for the Respondent

Final Decision : Allowed

Judgement

Altamas Kabir, J.—The Government West Bengal in its Labour Department had by an order dated 15th March, 2001, referred an industrial dispute between M/s. Titagarh Jute Mill No. 2, Licensee: Loomtex Engineering Private Limited and their workman represented by Thomas Duff and Associate Employees" Union to the 4th Industrial Tribunal, West Bengal, Calcutta, for adjudication on the following issue :

"Whether the termination of service of Shri Pasupati Biswas and 35 others (as per list enclosed), by way of refusal of employment with effect from 11.10.1999 is justified and to what relief, if any, are they entitled?

2. On receipt of the order of reference notices were issued to the parties and both the parties appeared and filed their written statements separately. Both the parties exchanged documents and adduced evidence and upon considering the said materials on record and the submissions made on behalf of the parties the learned Tribunal by its award dated 22nd January, 2004, held that the

termination of service of the 36 employees under reference by way of refusal of employment with effect from 11.10.1999 was not justified and their services had been terminated illegally. On the basis of such finding the learned Tribunal held further that the employees under reference were, inter alia, entitled to reinstatement in service with full back wages from the date of termination i.e. on and from 11.10.1999. The company was accordingly directed to reinstate the said employees and to pay them their full back wages and other reliefs with immediate effect.

3. Challenging the said award, M/s. Loomtex Engineering Private Limited filed a writ petition and during the pendency of the writ application an application was made by the appellant herein and the concerned union u/s 17B of the Industrial Disputes Act, 1947, on 12th May, 2004 for interim relief during the pendency of the writ petition.

4. The said application along with the affidavit u/s 17B of the aforesaid Act was taken up for hearing by the learned Single Judge on 8th July, 2004, and on 10th August, 2004, the learned Judge, inter alia, directed that three months' salary, along with one month's salary of each of the concerned workman, which had already been deposited earlier, be deposited with the Registrar General of this Court immediately. The Registrar General was directed to invest the said amount in Short-term Fixed Deposits with the United Bank of India, High Court Branch, Calcutta, and the hearing of writ petition was fixed on 24th August, 2004. Apart from the above, the interim order which had been passed earlier staying the impugned award was extended till the disposal of the writ petition.

5. Aggrieved by the said order of the learned Single Judge the appellants have preferred the instant appeal. Having regard to the nature of the relief prayed for in the appeal, on consent of the parties the appeal itself was taken up for hearing along with the application for stay.

6. Appearing in support of the appeal and the stay application, Mr. Dasan contended that the learned Single Judge had misunderstood and misconstrued the scope and ambit of Section 17B of the Industrial Disputes Act, 1947, and had erroneously directed four months' salary to be deposited by Loomtex Engineering Private Limited with, the Registrar General, with a direction to invest the same in Short-term Fixed Deposits.

7. Mr. Dasan urged that when an award is made by a Labour Court, Tribunal or National Tribunal directing reinstatement of any workman and the employer prefers any proceeding against such award in a High Court or in the Supreme Court, the workman concerned would be entitled to receive from the employer during the pendency of such proceedings, 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 is affirmed by such workman and filed in the Court. Mr. Dasan submitted that in the instant case an award had been passed by the Industrial Tribunal directing

reinstatement of the appellant/petitioner No. 1 along with 35 others in terms of the list enclosed with the order of reference and the same having been challenged by the respondent No. 1 in the writ application pending before the learned Single Judge, the said respondent was liable to pay to the appellant No. 1 and the other workman full wages last drawn by them in terms of Section 17B of the Industrial Disputes Act, 1947.

8. Mr. Dasan urged that the payment contemplated u/s 17B of the above Act was to enable the workman concerned to maintain himself during the pendency of the proceeding challenging the award and also to enable him to contest the proceeding challenging the award. Mr. Dasan urged that the very purpose of the payment to be made u/s 17B of the above Act had been neutralized on account of the direction given to make such deposit with a third party for the purpose of securing such award instead of directing such payment to be made to the workman concerned. Mr. Dasan urged that the purpose and intention of Section 17B is not to secure for the workman the amount which he would be entitled in terms of the order of reinstatement but to pay to him the amount required by him to maintain himself during the pendency of any proceeding challenging such award directing reinstatement in service.

9. In addition to his aforesaid submissions Mr. Dasan also submitted that as had been directed by the Hon"ble Supreme Court in the case of AIR 1998 511 (SC) , payment in terms of Section 17B of the above Act would have to be made from the date of the award till the case is finally decided in the Supreme Court or the High Courts. Mr. Dasan submitted that the Hon"ble Supreme Court had in no uncertain terms recorded that it was the legislative intention, as would be available from the Statement of Objects and Reasons for enacting the said provision, that in order to avoid hardship on account of delay in implementation of the award, it was proposed to provide the payment of wages last drawn by the workman concerned under certain conditions from the date of the award till the case was finally decided.

10. Mr. Dasan submitted that the said observation was emphasised by the Hon"ble Supreme Court in several portions of the judgment. Mr. Dasan also referred to the decision of the Hon"ble Supreme Court in the case of Ch. Saraiah Vs. Executive Engineer, Panchayat Raj Department and Another, , in which it was observed that the Court had no jurisdiction to direct non-compliance with the provisions of Section 17B of the Industrial Disputes Act when the condition precedent for passing such an order is satisfied.

11. Reference has also been made to several other decisions which reiterate the same sentiments.

12. Mr. Dasan submitted that Section 17B of the Industrial Disputes Act, 1947, did not envisage a direction being given to the employer to deposit certain amounts with a third party pending the disposal of an application u/s 17B and that either the employee concerned was entitled to payment in terms of the

provisions of Section 17B of the above Act or not at all. Mr. Dasan submitted that the learned Single Judge had grossly erred in giving such direction to the employer and such direction was in complete conflict with the object of Section 17B of the above Act. Mr. Dasan submitted that the order of the learned Single Judge was liable to be set aside with a direction upon the respondent/writ petitioner company to make payment to the appellant No. 1 in terms of the provisions of Section 17B of the above Act from the date of the award.

13. Appearing for the writ petitioner company, Mr. Partha Sarathi Sengupta, learned Advocate, submitted that the application made on behalf of the appellant No. 1 u/s 17B of the Industrial Disputes Act in the pending writ application was wholly misconceived having regard to the provisions of Section 17B itself,

14. In order to appreciate Mr. Sengupta's submissions and for a better appreciation of the problem the provisions of Section 17B of the above Act are reproduced hereinbelow ;

"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 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."

15. Mr. Sengupta urged that from the provisions of Section 17B itself it would be apparent that the said provisions have no application to the facts of this case. Mr. Sengupta submitted that in order to have application there has to be an award directing reinstatement of a workman and such award has to be challenged in a High Court or the Supreme Court by the employer. Furthermore, the workman has to establish that he had not been gainfully employed in any establishment during the pendency of such proceedings by filing an affidavit to that effect in the Court.

16. Mr. Sengupta submitted that only when all the said conditions were fulfilled could an application made by a workman for relief pending the challenge thrown by the employer to the award be entertained, and, in such case, the workman would be entitled to receive payment directly from the employer.

17. Mr. Sengupta contended that in the instant case although there was an award

directing reinstatement of the workman concerned, the same had not been challenged by the employer which would be evident from the finding of the learned Tribunal in the award itself. In this regard reference was made by Mr. Sengupta to the following observation made in the award :

"Facts remains the employees under reference are not the employees of Loomtex Engineering Private Ltd. but as per the agreement all the liabilities rest upon them on the ground that the employees have been transferred from Titagarh PLC to Loomtex Engineering Pvt. Ltd. for smooth running the said factory."

18. Mr. Sengupta submitted that the aforesaid observation made it very clear that neither the writ petitioner nor the thirty-five others were employees of the writ petitioner company and hence on a challenge being thrown to the award by the petitioner company the said workman did not become entitled to the benefits of Section 17B of the Industrial Disputes Act.

19. Mr. Sengupta then urged that even if it is held that the writ petitioner and the thirty-five other workmen were, in fact, entitled to relief u/s 17B of the above Act, such relief could be given only during the pendency of the proceedings challenging the award and not from the date of the award as had been contended by Mr. Dasan. Mr. Sengupta contended that the language of Section 17B made it clear that the liability of the employer to pay the workman was only during the pendency of such proceedings in a High Court or the Supreme Court. Mr. Sengupta submitted that the observations made by the Hon'ble Supreme Court in the Dena Bank case (supra) regarding the legislative intent that payment in terms of Section 17B should be made from the date of the award, were observations made in passing without deliberating upon the issue itself. Mr. Sengupta submitted that the said issue as to from what date payment is to be made u/s 17B did not even fall for the consideration of the Hon'ble Supreme Court in the Dena Bank case and the observation made in the said context had no binding and was not, therefore, the ratio to the said judgment.

20. In this regard, Mr. Sengupta firstly referred to the decision of the Hon'ble Supreme Court in the case of Rajput Ruda Meha and Others Vs. State of Gujarat, , wherein it was, inter alia, explained that when a certain question is neither raised nor agreed, a discussion by the Court on such issue after pondering over the issue in depth would not be a binding precedent.

21. Various other decisions were cited by Mr. Sengupta on the same proposition which need not detain us as far as the said question is concerned.

22. On the question as to when the benefit in terms of Section 17B became payable Mr. Sengupta submitted that the observations made in the Dena Bank case (supra) were made on the basis of the Statement of Objects and Reasons of the Bill proposing the introduction of Section 17B in the Industrial Disputes Act by amendment and it had been clearly indicated by the Hon'ble Supreme Court in The Central Bank of India Vs. Their Workmen, , that the Statement of Objects and Reasons is not admissible for construing a section, particularly when there is

no ambiguity in the section itself.

23. Mr. Sengupta also referred to the decision of the Hon^{ble} Supreme Court in the case of Jia Lal Vs. The Delhi Administration, , wherein it was categorically stated that the Statement of Objects and Reasons is not a part of the history of the legislation but merely an expression of what according to the mover of the Bill are the scope and purpose of the legislation.

24. Other decisions were also referred to in this regard where similar sentiments have been expressed.

25. Mr. Sengupta submitted that the clear and unambiguous language of Section 17B of the Industrial Disputes Act made it clear that relief u/s 17B of the above Act would be payable during the pendency of a proceeding challenging an award directing reinstatement of a workman.

26. Mr. Sengupta then submitted that there was also some area of doubt as to at what point of time it could be said that proceeding was pending for the purposes of Section 17B of the above Act since the challenge thrown to an award could be taken up for decision at a stage much later than when the challenge is initially made. In such circumstances, as employer would be required to pay its workman full wages for the entire period during which the matter was not heard owing to no fault of the employer. Mr. Sengupta, therefore, urged that logically directions for payment u/s 17B would have to be made from the date of the order directing such payment. Mr. Sengupta submitted that the second limb of his argument would be attracted only if the first limb of his argument was not accepted.

27. On behalf of the State it was submitted that once an award had been made directing reinstatement and the same was challenged before the High Court the provisions of Section 17B came into operation and the workman in whose favour the award had been passed became entitled to relief u/s 17B during the pendency of the proceedings.

28. We have carefully considered the submissions made on behalf of the respective parties having particular regard to Mr. Sengupta's submissions that the learned Tribunal had in its award held that the workmen under reference are not the employees of Loomtex Engineering Private Ltd.

29. At first glance Mr. Sengupta's submission appears to be attractive but, in our view, the same cannot be accepted having regard to the fact that notwithstanding such observation the learned Tribunal directed that the workmen under reference be reinstated in service. Whether ultimately Mr. Sengupta's contention will succeed or not will depend upon a final decision in the writ petition, but the scheme of Section 17B is such that while the award is in force and is under challenge by the employer, who has been directed to reinstate the workmen in service, the workmen would continue to receive interim relief during the pendency of the proceedings.

30. Admittedly, there is an award directing reinstatement of the workmen by the

writ petitioner. Till such time as the award is not altered and/or modified it continues to be in force and the provisions of Section 17B of the above Act are attracted as soon as the award is challenged by the employer. Mr. Sengupta has very fairly conceded that if the provisions of Section 17B are held to be applicable the direction given by the learned Single Judge to the writ petitioner to deposit the indicated amount with the Registrar General cannot be sustained and must be set aside. Section 17B was intended to provide relief to a workman in whose favour an award for reinstatement has been made and such award has been challenged in the higher forum. Payment in terms of an order made on an application u/s 17B must, therefore, be made directly to the workman and no direction could be given to keep the same in deposit since the very purpose of such payment would otherwise be defeated.

31. The appeal preferred by the workman has to succeed and must accordingly be allowed. The question, however, remains as to when payment on the application made by the workman is to commence. On the said score we agree with Mr. Sengupta that such payment cannot be directed to be made from the date of the award having regard to the language of Section 17B itself which makes it clear that such payment is to be made during the pendency of the proceedings challenging the award. At best it may be said that the proceedings must be deemed to be pending from the date from which it is instituted and not from the date of the order on the application made u/s 17B of the Act. We are inclined to accept the said interpretation since it is not within the control of the parties to the litigation to determine as to when a challenge to an award can be finally decided. In our view, the moment a challenge is thrown to an award directing reinstatement, the relief u/s 17B becomes available to the workman who is directed to be reinstated in service. The payment in terms of an order passed u/s 17B would, therefore, be effective from the date on which the proceedings are initiated.

32. The appeal is accordingly allowed and the order of the learned Single Judge dated 10th August, 2004, is modified to the effect that the writ petitioner shall pay to the appellant interim relief in terms of Section 17B of the Industrial Disputes Act, 1947, with effect from the date on which the writ petition was filed and shall go on making such payment till the writ petition is finally disposed of. In the event the amounts as directed by the learned Single Judge have already been deposited by the writ petitioner company with the Registrar, Original Side, they will be entitled to reimbursement of the same.

33. Having regard to the nature of the order under appeal, there will, however, be no order as to costs.

34. This order will govern all the other appeals preferred by the other workmen against the common order under appeal.

35. Prayer made on behalf of the appellant company for stay of the direction regarding payment of interim relief is considered and refused.

36. Registrar, Original Side and all parties to act on a signed copy of the operative portion of this judgment on the usual undertakings.

37. Urgent certified copy of this judgment if applied for be supplied to the parties expeditiously.

Asit Kumar Bisi, J.

38. I agree.