
(2009) 07 RAJ CK 0083
In the Rajasthan High Court

B.R. Jyani (Shri)	Vs	APPELLANT
Shri Nathu Lal Sharma and Another		RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2010) 124 FLR 335 : (2010) 1 RLW 903

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Judgement

Narendra Kumar Jain, J.—Heard learned Counsel for the parties.

2. The applicant-workman/respondent No. 1 Nathu Lal Sharma filed this second application u/s 17-B of the Industrial Disputes Act, 1947 to issue necessary direction to petitioner to pay the full wages to the respondent-workman last drawn by him from 2nd February, 1993 till date and further to pay monthly wages during the pendency of this writ petition.

3. The first application u/s 17-B of the Act was dismissed by this Court on 12th April, 2007 as not maintainable as present matter arises out of proceedings u/s 33(2)(b) of the I.D. Act. However, the learned Counsel for the petitioner fairly and frankly admits and has not raised any objection about maintainability of this application u/s 17-B of the Act in view of the judgment of Division Bench of this Court in Karan Singh Vs. Authorised Disciplinary Authority RSRTC and Another, Karan Singh v. Authority Disciplinary Authority and Anr.; decided on 18th December, 2008, wherein the Hon'ble Division Bench took a view that application u/s 17-B of the Act is maintainable in a writ petition arising out of proceedings u/s 32(2)(b) of the Act.

4. The submission of learned Counsel for the applicant-respondent No. 1 is that petitioner be directed to pay the last pay drawn to respondent from the date of termination i.e. 2nd February, 1993 or at-least from the date of award passed by the Industrial Tribunal, whereas the learned Counsel for the petitioner contended

that the order u/s 17-B of the Act may be passed from the date of order of this Court and in support of his submission, he relied upon the Division Bench judgment of this Court dated 28th January, 2009 in D.B. Civil Special Appeal (Writ) No. 1225/2008 - Rajasthan State Road Transport Corporation v. Gani Khan.

5. So far as entitlement of last pay drawn by respondent No. 1 is concerned, the same has not been disputed by the learned Counsel for the petitioner. The only controversy in the present case is as to whether the respondent No. 1 is entitled for payment u/s 17-B of the Act from the date of termination or award passed by the Industrial Tribunal or from the date of filing of writ petition or order of this Court.

6. The learned Counsel for the workman-respondent No. 1 in support of his contention referred the judgment of Division Bench of this Court in Karan Singh v. Authorised Disciplinary Authority - D.B. Civil Special Appeal (Writ) No. 706/2008 (supra); judgment of Hon'ble Apex Court in Regional Authority, Dena Bank and Another Vs. Ghanshyam, and also Bal Hit Shiksha Samiti Happy School, Alwar v. Shri Dharam Singh and Anr. reported in (2009) 1 WLC (Raj.) 283.

7. I have considered the submissions of learned Counsel for the parties and examined the provisions of law and also the above referred decisions of this Court.

8. For ready reference, Section 17-B of the Act is reproduced as under:

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.]

9. The above provision makes it clear that 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.

10. There is no dispute in between both the parties that workman is not in employment in any establishment.]

11. In Rajasthan State Road Transport Corporation v. Gani Khan (supra), the Division Bench of this Court consisting of Hon''ble The Chief Justice Mr. Narayan Roy and Hon''ble Mr. Justice R.S. Rathore took a view while considering the application u/s 17-B of the Act that last wages drawn would be payable to the concerned workman from the date of the order passed by this Court. The relevant part is reproduced as under:

Admittedly, the lis was pending before this Court by virtue of the writ application and while passing the order u/s 17(B), the Court is mandated to direct for payment of last wages drawn during pendency of the proceeding in the High Court. The learned Single Judge of this Court, in this view of the matter, could have directed for payment of last wages drawn from the date of the order passed by this Court and not from the date of the award of the labour Court. In this view of the matter, the order impugned is modified to the extent that the last wages drawn would be payable to the concerned workman from the date of the order passed by this Court.

12. In Karan Singh v. Authorised Disciplinary Authority (supra), the Division Bench of this Court consisting of Hon''ble Mr. Justice Narayan Roy and Hon''ble Mr. Justice Mohammad Rafiq directed that workman will be entitled to receive such last drawn wages u/s 17-B of the Act throughout during the pendency of the writ petition namely; from the date of filing of writ petition till its disposal. Para 12 of the aforesaid judgment is reproduced as under:

12. In view of aforesaid discussion, we are unable to concur with the view taken by the learned Single Judge. Impugned-order passed by the learned Single Judge holding application u/s 17B in a writ petition arising out of proceedings u/s 33(2) (b) of the Act as not maintainable thus cannot be sustained. This appeal is, therefore, allowed. Consequently, the impugned order dated 15.11.2007 is set-aside and the application filed by the appellant-workman is allowed and he is held entitled to last drawn wages and is further held entitled to receive such last down wages u/s 17-B of the Act throughout during the pendency of the writ petition namely; from the date of filing of writ petition till its disposal in accordance with provisions of Section 17B of the Industrial Disputes Act.

13. In Bal Hit Shiksha Samiti Happy School v. Shri Dharam Singh (supra), the learned Single Judge of this Court, Hon''ble Mr. Justice R.S. Rathore, who was one of the member of Division Bench, who decided Rajasthan State Road Transport Corporation v. Gani Khan (supra); held that workman is entitled for the benefit u/s 17-B of the ID. Act, 1947 from the date of filing of the writ petition. Para 8 of the judgment is reproduced as under:

8. In view of the decision of the Division Bench of this Court, it leaves no room of doubt that the two fold contentions raised by the counsel for the petitioner namely, delay in filing the application u/s 17-B and dis-entitlement of the benefits under said provision after passing of the stay order by the High Court, does not deserve consideration by this Court. In the result, I am of the view that the respondent-workman, in the facts and circumstances of the case, is entitled for benefit u/s 17-B of the ID Act, 1947 from the date of filing of the writ petition, i.e. 31.10.2000.

14. In view of above discussions of relevant case laws of this Court, it is clear that Hon''ble The Chief Justice Mr. Narayan Roy, who was one of the member of Division Bench in RSRTC v. Gani Khan (supra), while deciding the case of Karan Singh v. Authorised Disciplinary Authority (supra), took a view that workman is entitled for last drawn wages from the date of filing of the writ petition. Similarly the another member of Division Bench i.e. Hon''ble Mr. Justice R.S. Rathore at the time of deciding the Rajasthan State Road Transport Corporation v. Gani Khan (supra), while deciding Bal Hit Shiksha Samiti Happy School v. Shri Dharam Singh (supra), took a view that workman is entitled for benefit u/s 17-B of the I.D. Act from the date of filing of the writ petition. It is relevant to mention that judgment passed by Division Bench in Karan Singh v. Authorised Disciplinary Authority (supra) has not been considered in another Division Bench judgment in Rajasthan State Road Transport Corporation v. Gani Khan (supra), whereas all the three Hon''ble Judges, who were party in above-referred two Division Bench judgments, have taken a view in one of the case that workman is entitled to get last wages drawn from the date of filing of the writ petition.

15. Apart-from above, it is relevant to mention that in Dena Bank v. Ghanshyam (supra), the workman-respondent Ghanshyam's services were terminated with effect from August, 1990. He raised an industrial dispute and Labour Court vide its award dated 8th May, 1996 held that termination order of workman was bad in law and ordered his reinstatement with back-wages. The correctness of that award was assailed by appellant Dena Bank in the High Court and vide impugned order dated 4th May, 2000, the High Court directed the appellant-Dena Bank to pay regular scale with effect from 6th December, 1996 within one month from the date of filing of certified copy of that order, failing which the appellant should appear before the Court on 4th July, 2000. That order was under challenge before the Hon''ble Apex Court. The Hon''ble Apex Court in para 9 of its judgment held that 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 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. The Hon''ble Apex Court upheld the order passed by the High Court with some modification that if the appellant succeeds in the writ petition, then it will be entitled to

recover the difference of amount (i.e. amount paid under the impugned order less the amount payable u/s 17-B of the Act) from the respondent in accordance with law. Para 9 and 14 of the judgment are reproduced 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 proceedings 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 case this Court elucidated the expression "full wages last drawn" as follows: (SCC p. 115, para 21)

...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 service and when his services were terminated and therefore used the words "full wages last drawn".

14. It is brought to our notice that pursuant to the orders of the High Court under challenge the appellant had paid the amount to the respondent. It is clarified that if the appellant succeeds in the writ petition, it will be entitled to recover the difference of amount (i.e. amount paid under the impugned order less the amount payable u/s 17-B of the Act) from the respondent in accordance with law.

16. The above discussions of case law reveal that there are two contradictory judgments of Division Bench of this Court in the case of Rajasthan State Road Transport Corporation v. Gani Khan (supra) and Karan Singh v. Authorised Disciplinary Authority (supra), therefore, the matter deserves to be referred to Larger Bench/Full Bench, but in view of the fact that on the same point, the judgment of Hon''ble Apex Court is there in the case of Dena Bank v. Ghanshyam (supra), wherein the Hon''ble Supreme Court considered the Objects and Reasons for inserting the provisions of Section 17-B of the I.D. Act and upheld the order of the High Court with some modification, I do not think it fit and proper to refer the matter to Larger Bench/Full Bench and direct the petitioner to pay the last wages drawn by him from the date of filing of the writ petition.

17. Consequently, the application filed by the respondent No. 1 u/s 17-B of the Act is allowed and petitioner is directed to pay full wages last drawn by the

workman, inclusive of any maintenance allowance admissible to him under any rule from the date of filing of the writ petition i.e. 28th March, 2006 till the final disposal of this writ petition. The arrears till date be paid within a period of two months from the date of production of certified copy of this order.