

(2010) 08 GUJ CK 0170
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1731 of 2010 in Civil Application - for Direction No. 3385 of 2010 in Special Civil Application No. 3668 of 2009 and Civil Application No. 8704 of 2010 in Letters Patent Appeal No. 1731 of 2010

Cadila Pharmaceuticals Limited

APPELLANT

Vs

Jyotiben Harishbhai Pandit

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2011) 128 FLR 182 : (2011) 2 LLJ 216 : (2011) LLR 267

Hon'ble Judges : S.R. Brahmbhatt, J;A.L. Dave, J

Bench : Division Bench

Advocate : Hasmukh Thakker and Palak H. Thakkar, for the Appellant; Ghadiya, for the Respondent

Judgement

A.L. Dave, J.—Leave to amend the date of filing of affidavit by the respondent.

2. This Letters Patent Appeal arises out of the judgment and order rendered in Civil Application No. 3385 of 2010 in Special Civil Application No. 3668 of 2009 rendered on 12th April, 2010, directing the appellant employer to comply with the provisions of Section 17B of the Industrial Disputes Act (hereinafter referred to as "the I.D. Act") with effect from the date of award i.e. 12th February, 2008.

3. The grievance of the appellant is that the benefit of last wages drawn contemplated u/s 17B of the I.D. Act could not have been awarded from the date of the award. It should be in fact from the date of filing of affidavit by the employee to the effect that he was not gainfully employed. In support of this, learned Counsel for the appellant has relied on decision of the Apex Court in Uttaranchal Forest Development Corporation and Anr. v. K.B. Singh and Ors. reported in (2005) 11 SCC 449 and a subsequent judgment of Madras High Court between The Management of K.S.B. Pumps Limited and The Presiding Officer, Labour Court, Coimbatore and Ors. reported in 2010 LLR 813 where the benefit

of Section 17B of the I.D. Act was awarded from the date of filing of affidavit by the workman.

Learned advocate Mr. Thakkar submitted that in light of these two judgments, the learned Single Judge committed an error in granting the benefit from the date of award and therefore this appeal may be allowed.

4. Learned advocate Mr. Ghadiya for the respondent submitted that the learned Single Judge was justified in granting benefit of provision of Section 17B of the I.D. Act from the date of award in light of several pronouncements of various High Courts, and therefore, this Court may not interfere with the judgment.

5. Since the question involved is in a very narrow compass and at the request of parties the matter is taken up for final hearing today.

6. Considering the rival sides submissions, it is important to examine the provision contained in Section 17B of the I.D. Act which reads as under:

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.

7. Pendency of the proceedings before the High Court or the Supreme Court would mean the period falling between the date of institution and date of disposal. In fact, the judgment relied upon by learned advocate Mr. Thakkar in case of Uttaranchal Forest Development Corporation and Anr. (supra) was considered by this Court in Letters Patent Appeal No. 513 of 2008 in judgment dated 31.7.2008 where similar view is taken by this Court and it has been held that the entitlement of the workman would be for the period falling between the institution and final disposal of the proceedings and it would not include any time period either prior to such institution or subsequent to disposal of the petition. This Court while dealing with the said judgment of Uttaranchal Forest Development Corporation and Anr. (supra) made following observations:

7. The contention that the benefit of Section 17B would be available to the workman only when he makes an application or files an affidavit is not possible to be accepted for the reason that the language of the Section itself is very clear

that such right accrues in favour of the workman, who is ordered to be reinstated by a Labour Court or a Tribunal and that order of Labour Court or Tribunal is challenged by the employer either before a High Court or before the Supreme Court. The decisions which are relied upon by learned Advocate, Mr. Dave, are considered by us. In the case of Uttaranchal Forest Development Corporation (*supra*), the Supreme Court directed that the workmen would be entitled to the benefit of Section 17B of the Industrial Disputes Act from the date of filing affidavits. The facts are not known and we do not find any absolute proposition of law being set out that the workman would be entitled to the benefit of Section 17B of the Industrial Disputes Act only from the date of filing of affidavit or making an application. Similarly, in the case of Ganga Crops Safe Pvt. Ltd. (*supra*), we find that, in that case, assertion that the workman was not gainfully employed was made by the workman in the affidavit made by him on a particular date and, therefore, the Court held that the employer's liability to pay wages last drawn by the workman would arise from that date and not before. We are unaware about the other facts of the case, but there also the directions were given in the light of facts of that case and no absolute proposition of law is laid down by the Division Bench on the lines canvassed by learned Advocate, Mr. Dave.

7.1 Contrary to this, if we see that language of Section 17B, as discussed earlier by us, it is clear that what is required is that the workman must not be gainfully employed in any establishment during such period and an affidavit by such workman is filed to that effect in the Court. Such period would mean the period of pendency of litigation before the High Court or the Supreme Court, initiated by the employer to challenge the order of reinstatement passed by the Labour Court, Tribunal or National Tribunal, as the case may be. The entitlement, therefore, is for the said period provided the workman files an affidavit indicating that he was not gainfully employed during the period. The only exception that seems to have been carved out by the law makers finds its place in the proviso to the said section when it is said that, if 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 such wages shall be payable under the said section. Therefore, it is for the employer to satisfy the High Court or the Supreme Court that the workman was employed during the period and was receiving adequate remuneration. Otherwise, the workman, on the basis of an affidavit, would be entitled to the benefit of Section 17B, if he asserts that he was not gainfully employed during the period of pendency of the litigation before the High Court or the Supreme Court.

8. The resultant effect is that the order passed by the learned Single Judge granting the benefit of Section 17B of the I.D. Act from the date of award cannot be upheld. The appeal deserves to be allowed to that extent. The benefit would accrue to the workman from the date of institution of Special Civil Application No. 3668 of 2009 which is 15th April, 2009. The respondent workman therefore

would be entitled to that benefit from that date till the final disposal of Special Civil Application No. 3668 of 2009. Differently put, the petitioner would not be entitled to the benefit of Section 17B of the I.D. Act for the period falling between 12th April, 2008, and 15th April, 2009. The appeal, thus, stands partly allowed to the above extent. No order as to costs.

9. Needless to add that we would expect the appellant to comply with the provisions of Section 17B of the I.D. Act, if not complied, for the arrears of benefit that has accrued to the respondent workman at the earliest.

10. In light of disposal of main appeal, Civil Application No. 8704/10 stands disposed of with no order as to costs.