
(1993) 08 BOM CK 0079
In the Bombay High Court
Case No : Writ Petition No. 976 of 1993

Carona Sahu Co. Ltd.

APPELLANT

Vs

Abdul Karim Munakhan (Mr.) and Others

RESPONDENT

Date of Decision : 27-08-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 2

Citation : (1994) 1 LLJ 1100

Hon'ble Judges : A.V. Savant, J

Bench : Single Bench

Judgement

A.V. Savant, J.—This petition by the employer M/s Corona Sahu Co. Ltd., seeking to challenge the Award dated 4th February 1993 passed by the Labour Court Bombay directing the reinstatement of the workman respondent no. 1, has been admitted by this Court on 30th April 1993. Under the impugned Award the reference has been allowed and the employer company is directed to reinstate the workman respondent no. 1 in service with 75% of the back-wages and continuity of service with effect from 10th January 1989.

2. At the time of admission of the petition, ad-interim relief in terms of prayer (b) of the petition has been granted. Prayer (b) is for stay of the Award dated 4th February 1993. The condition of the ad-interim order is that there petitioner-company should deposit in this Court an amount of Rs. 39,000/- within 8 weeks and continue to deposit the salary of the first respondent from month to month. The first respondent workman has been give liberty to withdraw the amount deposited by the petitioner company on furnishing security to the satisfaction of the Prothonotary and Senior Master. Rule on interim relief was aside on 30th April 1993 which is being heard today.

3. The short question which arises for my consideration at this interim stage pending the writ petition is what is meant by the words "full wages last drawn by him" appearing in Sec. 17B of the Industrial Disputes Act, 1947. Shri Bhatkal appearing for the petitioner-company says that "full wages last drawn" would

mean the wages drawn on the date of termination which in this case is 21st April 1993. On the other hand Shri Ganguli for the first respondent-workman contends that the words "full wages last drawn" would mean the wages drawn on the date of termination plus the yearly increments and the dearness allowance to be worked out till the date of the Award, and that the same has to be paid to the workman during the pendency of the proceedings in this Court. According to Shri Ganguli, from the date of Award the full wages that would have been drawn by the first respondent inclusive of allowances would be Rs. 2558.15. If, however, the contention of Shri Bhatkal is accepted and the full wages last drawn by respondent no. 1 are taken to be the wages drawn by him at the date of termination along with the allowances, it would work out to only Rs. 1024.53 p.m. and that be amount payable under sec. 17B of the Act during the pendency of the petition in this Court.

4. Sec. 17B which has been inserted by the Industrial Disputes (Amendment) Act, 1982 (No. 46 of 1982) reads as under :

Sec. 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 workmen 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."

The objects and reasons for introducing sec. 17B in the Act are as under :

"When Labour Courts pass awards of reinstatement, these are often contested by an employer in the Supreme Court and High Courts. It was felt that the delay in the implementation of the award causes hardship to the workman concerned. IT was, therefore, proposed to provide the payment of was last drawn by the workmen concerned, under certain conditions, from the date of the Award till the case is finally decided in the Supreme Court or High Courts."

It is clear from the reading of the provision that though in Sec. 17B of the Act, the words "from the date of the Award" are not to be found, having regard to the objects and reasons stated for inserting this provision, one can come to the conclusion that the date from which the full wages last drawn are to be aid,

should be the date of the Award till disposal of the proceedings.

5. The word "wages" has been defined under Sec. 2 clause (rr) as under :

"Wages" means all remuneration cabal of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes -

(i) such allowance (including dearness allowance) as the workman is for the time being entitled to :

(ii) the value of any house accommodate, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles :

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business of both.

But does not include :

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law of the time being in force;

(c) any gratuity payable on the termination of his service.

6. The facts of the present case show that the impugned Award directs reinstatement of the workman-respondent no. 1 ins service with 75% of the backwages and continuity of his service with effect from 10th January 1989. The reasons for inserting the amendment by way of addition of Sec. 17B is unfortunately the delay the present system of administration of justice. If the words "full wages at drawn by him" are to mean the same wages that were last drawn by the workman when he was removed, dismissed or terminated from service, it would undoubtedly cause him great hardship and injustice and would, in my opinion, defeat the very purpose of the amendment. It is an accepted fact of life that as the years go by, the cost of living goes on escalating and if the first respondent had continued in service he would have been entitled to the yearly increments and dearness allowance till the date of Award. It would, in my opinion, be most unfair to the workman to say that while adjudication of the dispute takes time in the Courts, he would get his wages only at the rate at which he was paid when his service were terminated. In the present case the services were terminated as far back as on 21st April 1983. We are at the end of August 1993. I am not sure how long this petition would take in this Court. there may be a further appeal in this Court and perhaps to the Apex Court. To contend that during all these years the first respondent should be paid only at the rate of Rs. 10244.53 which was the amount of wages drawn by him on the date of

termination, would, in my view, totally defeat the purpose of inserting Sec. 17B in the Act.

7. The view which I am taking is also the view partly taken by the Division Bench of the Karnataka High Court to which my attention has been invited by Shri Ganguli appearing on behalf of the first respondent. indeed, it was contended before the Karnataka High Court that the words "full wages last drawn" should not only include the wages drawn on the date of termination plus yearly increment but also revision of pay, if any, effected during the pendency of the proceedings before the Labour Court. However, the Division Bench has rejected thus argument and held that the words "full wages last drawn" would take in it total wages drawn on the date of termination plus yearly increment and dearness allowance to be worked out till the date of the Award and that the same has to be paid to the workman during the pendency of the proceedings before the High Court. The Karnataka High Court made it clear that wages that would be worked cut upto the date of Award shall have to be paid during the pendency of the proceedings before the High Court. While I agree with this part of the reasoning of the learned Judges, with respect, I am unable to persuade myself to agree with the view of the Division Bench in so far as it excludes the revision of pay for being considered from the purpose of calculating the full wages last drawn. I must mention here that the figure mentioned by me, namely, Rs. 2558.15 as the figure of full wages last drawn in inclusive of not only the permissible allowances on the date of the Award but also the revision of pay.

8. Infact, Shri Ganguli contended that he workers similarly placed with the first respondent in the petitioner-company have not ant enjoyed the benefit of revision of pay scale but some of them have been promoted to higher posts. Promotion to higher post is a different question altogether. One can only claim that one should be considered for promotion and it will depend upon the rules of promotion in the acts and circumstances of each case. To say that he first respondent workman should be paid the same wages as are pad to the workman who was initially working with the first respondent and who has now been promoted is, in my view, some what farfetched. I am, therefore not accepting this contention of Shri Ganguli on behalf of the first respondent workman that the first respondent should be paid at the higher rate i.e. approximately Rs. 3000/ p.m. which represents the wages and allowances drawn by the promoted employee who was in the same cadre as the first respondent on 21st April, 1983. However, some of his colleagues in that category have now been promoted as skilled workers.

9. In view of above, in my view, the words "full wages last drawn by him" appearing in Sec. 17B would include the wages drawn on the date of termination of service plus yearly increments and dearness allowance. For calculating the wages last drawn by the workman the revision of pay, if any, will also have to be taken into account. Having regard to the definition of the word "wages" appearing in Sec. 2 Clause (rr) in the facts of the present case, the first

respondent would be entitled to contend that on the date of Award that is to say on 4th February, 1993 the full wages drawn by him would be Rs. 2558.15. Accordingly, ad-interim order granted by this Court is confirmed and it is clarified that the petitioner company is liable to deposit in this Court every month full wages drawn by the first respondent which shall be calculated on the basis that on the date of award namely 4th February, 1993 the full wages drawn by the first respondent-workman amounted to Rs. 2558.15. The first respondent is at liberty to withdraw the deposit made by the petitioner-company of furnishing security to the satisfaction of the Prothonotary and Senior Master as ordered by this Court earlier.

10. Shri Bhatkal applies for stay of operation of this order. Shri Ganguli opposes. Prayer is rejected.