
(2003) 04 GUJ CK 0038

In the Gujarat High Court

Case No : Civil Application No 2306 of 2003 In Special Civil Application No. 1604 of 2001, Civil Application No. 2307 of 2003 In Special Civil Application No. 608 of 2001, Civil Application No. 2308 of 2003 In Special Civil Application No. 1606 of 2001, Civil Appli

Deva Gova

APPELLANT

Vs

District Panchayat

RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2004) 24 GLH 273 : (2003) 4 GLR 73

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Yamini J Desai, for the Appellant; P.V. Hathi, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned advocate Ms. Yamini J Desai on behalf of the Original Respondents/Present Applicants and learned advocate Mr. P.V. Hathi on behalf of Original Petitioner/present Opponent in all the Petitions.

2. The Original Petitioner has challenged the common award passed by the Labour Court, Junagadh in group of References being No. 170 of 1998 to 177 of 1998 and 1184 of 1990 to 1191 of 1990 dated 9.12.1999, wherein the Labour Court, Junagadh has set aside the termination order and granted the reinstatement with continuity of service with 50% back wages of interim period.

3. This Court, in all individual Petitions has issued RULE and granted ad interim relief in terms of Para 10(D) on 5.3.2001. Because of the interim order, reinstatement has been stayed by this Court, the original respondents workmen have filed Civil Applications with a prayer to grant benefit u/s 17B of the Industrial Disputes Act, 1947 ("the Act" for short). Upon their application, this Court has passed an order on 8.3.2002 with a direction to the original petitioner to pay last drawn monthly wages inclusive of maintenance allowance to the respondents workmen from the date of the award and workmen shall have to file

necessary affidavits as required u/s 17B of the Act. The order of this Court dated 8.3.2002 is challenged by the original petitioner before the Letters Patent Bench of this Court being Letters Patent Appeal No. 656 of 2002 to 663 of 2002. The Letters Patent Bench has set aside the direction in respect to the maintenance allowance as objected by the original petitioner, that under the rule, there is no such provision granting the maintenance allowance. Before the Letters Patent Bench, it was pointed out by the original respondents that the respondents have been reinstated by the original petitioner, but they are not paid regular wages which other similarly situated persons are paid. This submission was objected by the appellant/present petitioner on the ground that there is no question of repayment of regular wages same that of similarly situated persons. The Letters Patent Bench has observed that; we are unable to accept this contention factually as well as legally. There is no direction of reinstatement in the impugned order of the learned Single Judge. Not only that, the question of award of interim period in terms of the provisions of Section 17B of the Act would arise only when the direction of the Labour court for reinstatement has not been honoured. Accordingly, all the Letters Patent Appeals have been disposed of. Meaning thereby, the Letters Patent Bench in respect to the very matter has observed that question of award of interim period in terms of Section 17B of the Act would arise only when the direction of the Labour Court for reinstatement has not been honoured.

4. The original respondents have filed present Civil Applications with a prayer to direct the original petitioner to pay regular current wages to the original respondents after the date of reinstatement in service pending the petitions. Against the said Civil Applications, reply has been filed by the original petitioner and contention raised is that such present applications are not maintainable. The Labour Court, Junagadh has passed an award on 9.12.1999, and original petitioner has filed petition on 11.7.2000, and the interim stay was obtained on 5.3.2001, and an application u/s 17B of the Act has been filed in December 2001, and ultimately, order was passed by this Court on 8.3.2002. Thereafter, original petitioner has reinstated the respondents workmen on 14.6.2002. Learned advocate Mr. P.V. Hathi appearing on behalf of the original petitioner has submitted that the petitioner is not duty bound to pay regular wages to the workmen even though after reinstatement, workmen are only entitled the wages as per Section 17B of the Act, and therefore, whatever payment has been made by the petitioner to the workmen, is legal and valid, and workmen are not entitled any regular wages from the petitioner. In short, this is the substance and the reply submitted by the original petitioner. Mr. P.V. Hathi has also pointed out that this reinstatement is subject to the order u/s 17B of the Act, therefore, workmen are not entitled the regular wages u/s 17B of the Act. Learned advocate Mr. Hathi has relied upon the decision of the Apex Court in the case of Regional Authority, Dena Bank and Another Vs. Ghanshyam, . He read certain portion of the judgement before this Court and highlighted the same. He pointed out that, in short, if any additional payment or some more payment is made by

the employer to the workmen, then the employer is entitled to recover the same from the workmen considering as last drawn wages as required to be made payment u/s 17B of the Act. Mr. Hathi has also pointed out that, if the difference of last drawn monthly wages as well as regular wages is required to be paid to all the workmen, then it comes to more than Rs. 1,61,440.00, and such amount is required to be paid by the petitioner without any substance because workmen are not entitled any regular wages. Therefore, he submitted that workmen are not entitled the regular wages from the date of reinstatement, but they are only entitled the last drawn monthly wages u/s 17B of the Act though they are reinstated on 14.6.2002.

5. Learned advocate Ms. Yamini J. Desai on behalf of the respondents workmen has submitted that after the reinstatement of the workmen, Section 17B of the Act is not applicable and workmen is entitled the regular full salary being a current wages which is available to the other similarly situated employees in their establishment, and therefore, not to pay regular and current wages to the workmen amounts to denying the legal right and which amounts to discrimination by the State authority that a regular employee as well as the present workmen are working on the same post and performing the same type of work even though one workman is getting regular wages Rs. 80.00 per day and present workman is getting only Rs. 17.00 per day from the petitioner. This fact is not disputed by the learned advocate Mr. Hathi that if any daily wager is appointed by the present petitioner, then he will be a fresh daily wager who is entitled daily wages at Rs. 80.00 per day, but these workmen are getting Rs. 17.00 per day because of the provisions of Section 17B of the Act.

6. I have considered the submissions made by both the learned advocates. Before examining this issue, it is necessary to refer Section 17B of the Industrial Disputes Act, 1947 which is quoted as under:

"17-B. Payment of full wages to workmen 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 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 provided to the satisfaction of the High 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."

This Section give relief to the workmen that after the reinstatement order passed by the Labour Court and that order has been challenged by the employer before

the higher forum, then during the period of pendency of such proceeding in the higher forum the workman is entitled last drawn monthly wages inclusive of maintenance allowance, if any, from the employer provided that workmen had not been employed in any establishment during such period and receiving adequate remuneration from the establishment.

So, the moment, the workman has been reinstated either by the order of the Court or by petitioner himself, then according to my opinion, the moment, the workman is reinstated, the question of applicability of Section 17B does not arise, meaning thereby, during the pendency of proceedings before the Higher forum, if the workman is reinstated, then Section 17B will not apply and workman is entitled the regular and current wages as a matter of legal right because he is doing the work similar to the other regular employees, and therefore, he is entitled regular wages from the employer. This aspect has been made clear by the Apex Court in reported decision which has been relied upon by the learned advocate Mr. P.V. Hathi in the case of Regional Authority, Dena Bank & Another V. Ghanshyam (Supra). The relevant discussion in paragraph 11 of the judgement is as under:

"Pursuant to the facts of this case, it is seen that on December 10, 1996, the High Court passed the following order; "Shri Y.S.Lohit appearing on behalf of the opposite party no. 1 prays for and is allowed three weeks time for filing counter affidavit. Issue notice to the opposite parties nos.2 and 3. In the meantime, Award of the Tribunal shall remain stayed provided petitioner is reinstated in service and is paid his salary regularly in accordance with law."

A plain reading of this order shows that the High Court stayed the award of the Labour Court on condition of the appellant reinstating the respondent in service and paying him salary regularly in accordance with law. It needs no debate to conclude that on reinstatement the respondent will be entitled to his salary on a par with other employees working in the same post and it is in that meaning that the said clause: and is paid his salary regularly in accordance with law", has to be understood. The appellant, however, did not reinstate the respondent but filed an application for modification of that order. The High Court modified the order on February 17, 1997; while maintaining the order of stay of the award as ordered on December 10, 1996 the following modified conditions were incorporated: (i) the appellant shall pay salary to the respondent regularly in accordance with law from the date of the writ petition filed on December 6, 1996 as stated by the counsel for the bank; and (ii) the arrears of salary from December 6, 1996 shall be paid within a period of seven days and thereafter as and when the salary is being paid to the other staff of the bank. It appears that the counsel of the bank also made a statement to that effect. On a complaint that the order dated February 17, 1997 was not complied with, the case was taken up on March 31, 2000 and the appellant was directed to explain as to why the said order has not been complied with. On May 4, 2000, it was brought to the notice of the Court that the respondent was being paid Rs. 900.00 per month

which represented the full wages last drawn. On that date the court directed the appellant to pay the regular pay scale to the respondent with effect from December 6, 1996 within one month of producing a certified copy of the order of the Court. In our view no exception can be taken to that order. Obviously, the salary which ought to be paid to the respondent could not be anything other than the salary which he would be entitled to on reinstatement, a fortiori, he would also be entitled to the arrears at the same rate."

7. Therefore, in view of the clear observations made by the Apex Court in above referred case in paragraph 11, according to my opinion, the workmen are entitled regular wages from the date on which the original petitioner has reinstated them on 14.6.2002 and the petitioner is duty bound to pay regular wages to the workmen, and during that period, if any wages u/s 17B of the Act have been paid, then the petitioner is entitled to adjust the said amount by making the payment of difference of salary between the last drawn monthly wages inclusive of maintenance allowance and regular salary. There is no order passed by this Court that after the reinstatement, workmen is only entitled last drawn monthly wages, so the order which has been passed by this court u/s 17B of the Act that; so long the workmen are not reinstated, the employer shall have to pay last drawn monthly wages inclusive of maintenance allowance, if any. No doubt, Letters Patent Bench has suggested that there is no such provision under the rule but Section is very clear on that issue that; in the Section after mentioning the maintenance allowance, so it is not considered to be a mandatory provision, but if any condition is there, then the workmen is entitled the benefit of such maintenance allowance. According to my opinion, the respondents workmen are entitled the regular salary from 14.6.2002 till the final hearing of the main petition.

8. Learned advocate Mr. P.V. Hathi on behalf of the original petitioner/present opponent has pointed out that if the difference of salary is required to be paid to all the respondents, then it comes to more than Rs. 1,60,440.00, and therefore, suggested that some other date may be fixed, so that financial burden may not be upon the public body. He also submit in case workmen succeeds, they will make the payment of difference of the remaining amount. Apparently, the submission made by the learned advocate Mr. Hathi is attractive but in reality not to grant the benefit from the date of reinstatement, amounts to doing injustice to the workmen who have actually worked on the post w.e.f. 14.6.2002. If any payment is required to be made by the petitioner accordingly to law, then question of amount or insufficient fund or any financial burden are irrelevant, therefore, suggestion and request made by the learned advocate Mr. Hathi is not accepted by this Court.

9. In the result, present Civil Applications are allowed with a direction to the original petitioner to pay the difference of salary to the respondents workmen between last drawn monthly wages and regular wages of the post in which the respondents workmen are working w.e.f. 14.6.2002 to 31.3.2003 within a period

of 6 weeks from the date of receiving the copy of the said order. It is further directed the original petitioner that so long the workmen are reinstated in service and they are working with the petitioner, they should have to pay regular wages during the pendency of main petition.

10. In view of the above observations and directions, present Civil Applications are disposed of.