
(2003) 04 DEL CK 0035

In the Delhi High Court

Case No : CM 10362 of 2002 in C.W 5868 of 1999

Duggar Fiber Pvt. Ltd.

APPELLANT

Vs

Shri Bengali Majhi and Others

RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Citation : (2003) 4 AD 426 : (2003) 105 DLT 145 : (2003) 69 DRJ 351 : (2004) 1 SLJ 75

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : H.K. Chaturvedi, for the Appellant; Tarkeshwar Nath, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—With the consent of the counsel for both the parties, the Order dated 25th April, 2003 which recorded a wrong date of 21st August, 2000 is recalled and CM 10632/02 which was disposed of vide Order dated 25th April, 2003 is taken up afresh today.

2. The question which is now required to be adjudicated in this application is whether the back wages u/s 17-B of the Act are payable from the date of the award.

3. The learned counsel for the petitioner has relied upon an Order of this Court dated 24th May, 2002, passed by Hon'ble Mr. Justice Manmohan Sarin in CM 5766/2002 in CW4948/2001 entitled as "Delhi Transport Corporation Vs Subhash Chander Mehta & Others. The relevant portion of the aforesaid Order dated 24th May, 2002 reads as follows:

"By this application, respondent seeks that the relief u/s 17-B of the I.D. Act be granted to him from the date of award i.e. 5.4.2000 and not from 17.8.2001 i.e. The date on which the stay order was passed by this Court. Learned counsel relies on Regional Authority, Dena Bank and Anr. Vs. Ghanshyam reported at J.T.

2001 Suppl S.C.229 and the observations therein that it was proposed to grant the relief u/s 17-B from the date of the award. However, Section 17-B refers to the liability of the employer to pay to the workman during the pendency of such proceedings in the High Court or in the Supreme Court, in which the award is challenged. The proceedings in the instant case were initiated on 17.8.2001 i.e the date on which the stay order was passed. I do not find any ground to entertain this request."

4. Thus the prayer of the respondent/applicant for payment of backwages u/s 17-B from the date of the award was rejected by the learned Single Judge after noticing the judgment of Hon"ble Supreme Court in Regional Authority, Dena Bank & Anr. Vs. Ghanshyam reported at J.T. 2001 Suppl S.C .229. The relevant portion of para 12 of the aforesaid judgment of the Hon"ble Supreme Court reads as follows:

"We have mentioned above that the import of Section 17-B admits of no doubt that Parliament intended that the workman should get the last-drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the Statement of Objects and Reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17-B was inserted in the Act....."

This judgment of the Supreme Court categorically holds that payment u/s 17-B should be from the date of the award.

5. The learned counsel for respondent No. 1/applicant has, however, relied upon the judgment of Hon"ble Mr. Justice Vikramajit Sen in Paramjit Singh Ahuja Vs Presiding Officer, Labour Court-VI & Others reported as 2001 LLR 1224 wherein the learned Single Judge has relied upon his earlier judgment in Municipal Corporation of Delhi Vs. Ramkishan and Another, to hold that the legislative intent is that Section 17-B order should be from the date of the award till the disposal of the proceedings.

6. Thus there is an order of the learned Single Judge, Hon"ble Mr. Justice Sarin in DTC's case (supra) denying back wages from the date of the award by seeking to rely upon the judgment of the Dena Bank's case (supra). There is another judgment of the learned Single Judge, Hon"ble Mr. Justice Sen taking a contrary view independent of reliance on the judgment of Dena Bank's case to hold that the back wages were payable from the date of the award. In my view, the judgment of the Hon"ble Supreme Court in Dena Bank's case (supra) is categorical and holds in terms that the import of Section 17-B admits of no doubt that the Parliament intended that the workman should get the last-drawn wages from the date of the award till the challenge to the award is finally decided. In my view this Court is fully bound by the judgment of the Hon"ble Supreme Court in Dena Bank's case (supra) and is bound to grant back wages from the date of the award.

7. In view of the categorical determination of this question by the Hon"ble Supreme Court in Dena Bank's case (surpa), I regret my inability to concur with

Hon"ble Justice Sarin's view in DTC Vs Subhash Chander Mehta & Others (supra) and respectfully agree with Justice Sen's view in Paramjit Singh Ahuja's case (supra) which view has received affirmation in Dena Bank's case (supra).

8. Accordingly, the application is allowed and the petitioner is directed to pay the respondent No. 1/workman the wages last drawn by him which should not be less than the minimum wages applicable from time to time with effect from the date of award, i.e., 19th March, 1999 till 26th November, 2002 that is the date when the offer to absorb the respondent No. 1/workman was made in this Court by the learned counsel for the petitioner. At this stage a plea has been raised by the learned counsel for the petitioner by relying on the communication of the offer to take back the respondent No. 1 in service for which purpose reliance has been placed on a letter which has not been filed in this Court up to date. Consequently, I do not propose to look into this letter and this letter may only be considered as and when the same is filed in this Court. However, it is made clear that the respondent No. 1/workman will comply with all the disciplinary requirements and will report for duty at the shift time indicated to him with immediate effect.

9. This application accordingly stands allowed.