

(2003) 04 GUJ CK 0003
In the Gujarat High Court

Case No : Special Civil Application No. 1135 of 2003 in Spl. C.A. No. 5032 of 1998

Dungarbhai Dahyabhai Parmar

APPELLANT

Vs

Ashoka Cotsyan

RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 79
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 17B

Citation : (2003) 3 GLR 2409

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

Bench : Single Bench

Advocate : T.K. Jhala, for A.J. Yagnik, in Civil application No. 1135 of 2003 and Deepak V. Patel in Civil application No. 5032 of 1998, for the Appellant; D.G. Chauhan, for Deepak V. Patel, in Civil Application No. 1135 of 2003 and A.J. Yagnik in Civil Application No. 5032 of 1998, for the Respondent

Judgement

H.K. Rathod, J.

Nirbalki Ladai Balwan Se, Yeh Kahani Hai Diye Ki Aur Toofan Ki.

1. Heard learned Advocate Mr. T. K. Jhala for Mr. Yagnik for the applicant original respondent and Mr. Chauhan for Mr. Patel for the opponent original petitioner. Original petitioner has filed the aforesaid petition challenging the order passed by the Labour Court under the provisions of the Bombay Industrial Relations Act, 1946 in T. Application No. 432 of 1990 u/s 79 of the B.I.R. Act, 1946 wherein the Labour Court concerned has granted reinstatement with full back wages for the intervening period in favour of the workman. That order was challenged by the petitioner before the Industrial Court u/s 84 of the B.I.R. Act, 1946 by filing Appeal No. 11 of 1997 and the said appeal was dismissed by the Industrial Court concerned on 13-1-1998. On 14-12-1999, this Court has issued Rule and notice as to interim relief was also issued by making it returnable on 24-12-1999. Thereafter, on 29-2-2000, this Court passed further order as under :

"Heard learned Advocates. There shall be interim relief in terms of Para 12(B) on condition that the parties pays a sum of Rs. 50,000-00 to the respondent-workman towards the back wages ordered to be paid to the workman. The aforesaid amount shall be paid within a period of six weeks from today."

The interim order dated 29th February, 2000 passed by the learned single Judge of this Court was challenged by the present petitioner before the Division Bench of this Court by filing L.P.A. No. 113 of 2000 and the Division Bench of this Court has, by order dated 16-10-2000, dismissed the said L.P.A. with a direction that it will be open for the original respondent to move for withdrawal of the amount of Rs. 50,000-00 and on that occasion, the learned single Judge will pass appropriate order in accordance with law. Thereafter, this Court passed further order on 9-11-2000. Under the said order, the respondent-workman was allowed to withdraw the amount of Rs. 50,000-00 deposited by the petitioner pursuant to the order dated 29th February, 2000 made by the learned single Judge of this Court. Under the said order dated 9-11-2000, this petition was ordered to be placed for final hearing in the final hearing Board commencing from 27th November, 2000. However, the matter has remained pending thereafter.

2. In this civil application, the respondent-workman has averred that he has lost sight (sic.) for more than a decade; he can walk only with someone's assistance on account of blindness; at present, his minor children run the house; the applicant, obviously, is not employed anywhere after he was made to resign under threat and coercion by the present respondent from his work and he is not getting any remuneration at all; the applicant is at present 54 years old. On the basis of such averments made in this civil application, the applicant has prayed for directing the original petitioner to pay to the applicant original respondent minimum wages as fixed by the competent authorities, that he would have been entitled to receive if he were not compelled to resign under threat and coercion, particularly in light of the fact that the applicant has become blind for more than a decade and has not reached the age of retirement as per Section 17B of the I. D. Act from the date of the award or in the alternative from 20-2-2000.

3. Present Civil Application was contested by the original petitioner by filing reply wherein it has been contended that this being the matter under the B.I.R. Act, provisions of the I. D. Act, 1947 would not be applicable, and accordingly, provisions of Section 17B of the 1. D. Act also would not apply. Thus, it is the submission of the petitioner that the wages u/s 17B of the 1. D. Act, 1947 cannot be granted in this matter under the B.I.R. Act. It has also been contended that the applicant has voluntarily resigned from service and he has been paid Rs. 41,864-75 towards all of his legal dues. It has also been contended that the applicant has suppressed the material and relevant facts that he had received and retained Rs. 41,864-75 ps. towards all his legal dues. Thereafter, again, the contention has been reiterated that the provisions of Section 17B of the I. D. Act, 1947 are not applicable to the award under the B.I.R. Act, 1946 as per the decision of this Court reported in 2003(1) LLJ 175 (Baroda Central Co-op. Bank

Ltd. v. Khodabhai Somabhai Baria). The petitioner has also relied upon the unreported decision of this Court (Coram : M. S. Shah, J.) dated 27-12-2001 in Spl. C. A. No. 9937 of 2001 with C.A. No. 12292 of 2001. It has also been contended that at the time of admitting the matter, this Court has granted Rs. 50,000-00 towards the back wages which has been withdrawn by the respondent. It has also been contended that the respondent is blind and has lost his vision since last about ten years and he is unable to perform his duties, and therefore, cannot make any claim. In Para 4 of the reply, the petitioner has also contended that the applicant was engaged as jhaduwala (Sweeper) badli worker by Rohit Mills Ltd. on 27-4-1963; on 25-6-1990, the applicant was charge-sheeted for grave and serious misconducts; the applicant was apprehending departmental proceedings against him, and therefore, on 25-6-1990, offered voluntary resignation and requested the opponent company to settle his accounts; this resignation was submitted through the T.L.A. and the same was endorsed by the representative of the T.L.A. who was examined as a witness. It has been submitted that the Courts below have not appreciated the above facts and the evidence of the representative of T.L.A., and therefore, the judgments of the Courts below are perverse and baseless. It has also been submitted that on the request made by the applicant, the resignation was accepted and all legal dues were paid to the applicant and the same were accepted and retained by the applicant. Thus, it is the case of the petitioner that in all, the respondent has received Rs. 91,864-70 ps. (Rs. 41,864-70 plus Rs. 50,000-00), and therefore also, the workman is not entitled for the reliefs prayed for in this Civil Application.

4. I have considered the submissions made by the learned Advocate Mr. D. G. Chauhan for the petitioner as well as the submissions made by the learned Advocate Mr. Jhala who has been representing the respondent-workman. The order granting reinstatement was passed by the Labour Court on 26-2-1997 with continuity of service with full back wages for the intervening period and the appeal against the said order of the Labour Court was dismissed by the Industrial Court on 13-1-1998, and thereafter, the order of the Labour Court as confirmed by the Industrial Court as stated aforesaid has been challenged by the petitioner before this Court by filing the main petition which is pending before this Court since then.

5. It was submitted by the learned Advocate Mr. Chauhan on behalf of the original petitioner that by order dated 24-3-2003, this Civil Application was ordered to be listed along with Special Civil Application No. 5032 of 1998 on 26th March, 2003. He also submitted that on 29-3-2003, this Civil Application was directed to be listed separately for final hearing on 1-4-2003 after considering the submission made by the learned Advocate Mr. Yagnik that the final hearing of the main matter is not taking place despite the fact that the main matter is listed on the Board. Thus, it was the submission of Mr. Chauhan that the main matter may be fixed for final hearing. The main contention raised by Mr. Chauhan is that the order has been passed by the Labour Court u/s 79 of the B.I.R. Act and the Industrial Court dismissed the appeal u/s 84 of the B.I.R. Act, and therefore,

present application for the relief u/s 17B of the I. D. Act should not be entertained as the provisions of the I. D. Act are not applicable to the present matter. As against that, it was the submission made by Mr. Jhala appearing for the applicant original respondent-workman that if the contention raised by Mr. Chauhan is upheld, then this Court may consider the case of the respondent under Arts. 226 and 227 of the Constitution of India and this Court may pass appropriate order granting appropriate relief in favour of the respondent-workman in exercise of the powers under Article 226/227 of the Constitution of India.

6. Learned Advocate Mr. Chauhan has relied upon two decisions referred to above. One is the decision of this Court (Coram : K. M. Mehta, J.) and the other is the decision given by this Court (Coram : M. S. Shah, J.). I have gone through the said decisions. There is no need to express any opinion in respect of said two decisions which have been relied upon by Mr. Chauhan that the relief u/s 17B cannot be granted in the matter arising out of the provisions of the B.I.R. Act. At this juncture, there is no need to examine this question by this Court.

7. However, the question is that at the time of so-called resignation, an amount of Rs. 41,000-00 was paid and by way of interim relief, an amount has been Rs. 50,000-00 has been paid to the respondent-workman towards the back wages. The fact remains that the workman in whose favour award of reinstatement has been made by two Courts has yet not been reinstated. The order of reinstatement was passed by the Labour Court on 26-2-1997 and the second order confirming his reinstatement was passed by the Industrial Court on 13-1-1998, and thereafter, five years have gone, but the respondent has yet not been reinstated in view of the interim stay granted by this Court, meaning thereby, this Court has stayed the order of reinstatement. It is clear that the payment of Rs. 50,000-00 made in favour of the respondent-workman is not in lieu of reinstatement, but it was in lieu of back wages and till this date, no relief has been granted in favour of the workman in lieu of reinstatement. The aim and object of enacting Section 17B of the I. D. Act is to pay wages to the workman so that he can maintain the family by way of subsistence allowance and such amount is not recoverable or refundable as per the decision of the Hon'ble Apex Court in case of Dena Bank v. Kiritkumar T. Patel reported in 1997 (2) GLH 946 (SC). Therefore, when a particular law has been amended with such a particular object, same principle can be made applicable to a Case where the reinstatement has been stayed by this Court. Therefore, keeping that object in mind and considering the facts of this case, the workman in this case has been out of job since 25th June, 1990 and he has been ordered to be reinstated in service on 26th February, 1997 by the Labour Court and the same was confirmed by the Industrial Court on 13-1-1998. Thus, after the period of eight years from the date of his so-called resignation, award of reinstatement was made by the Labour Court, and thereafter, about five years have gone and the challenge of the petitioner against the award of reinstatement is pending before this Court wherein reinstatement has been stayed by this Court. Therefore, in such a

situation, according to my opinion, the workman is entitled for some wages during the pendency of the petition since the reinstatement has been stayed as it is not possible for this Court to examine the merits of the main matter immediately. Therefore, while examining the merits of this application filed by the respondent, I am not considering the merits of the main matter. I am also not relying upon any observations made by the Labour Court in the order of reinstatement or the observations made by the Industrial Court while confirming the award of reinstatement made by the Labour Court. While considering this application, I am considering the only fact that the workman who is out of job since 1990, who is blind since last about 10 years has remained without reinstatement in spite of the award made in the year 1997 by the Labour Court while keeping in mind that the amount of Rs. 50,000-00 has been paid to the respondent-workman towards his back wages but no relief has been granted to the workman as regards reinstatement till this date. The amount of Rs. 41,864-00 was paid by the petitioner to the workman not by way of grace or for any other purpose, but it was just to comply with the legal requirement, and therefore, that aspect also cannot be taken into consideration while examining the application of the respondent-workman. The workman covered by the B.I.R. Act and the workman covered by the I. D. Act both are having same difficulties when reinstatement made by the Labour Court or the Industrial Court is stayed by this Court. There cannot be any dispute about the fact that during the pendency of the petition against such an award before the higher forum, the workman has to maintain himself and his family; he has to perform his social and family responsibilities as well as also required to defend pending proceeding and this aspect has not been denied by the petitioner and even otherwise, it is not the case of the petitioner that the respondent-workman has been gainfully employed in any establishment elsewhere, and therefore, he is not entitled for any such relief. In Para 3 of the reply itself, the petitioner has contended that the applicant is blind since last ten years and is unable to perform his duties. From this contention itself, it can be inferred that the workman is unable to do any petty work for maintaining himself during the intervening period and this is within the knowledge of the petitioner too.

8. The law in respect of subsistence allowance is almost settled. During the service, when such occasion arise, subsistence allowance must have to be paid to the workman, otherwise, it would amount to denial of reasonable opportunity to the workman. When any allegation has been made against the workman by the employer and the charge-sheet has been served to the workman, thereafter, question of payment of subsistence allowance will arise on suspension during the pendency of the inquiry. At such occasion, as per the Service Rules, whatever suspension allowance available to the workman is required to be paid to the workman by the employer. The reason behind that is to the effect that the suspension pending enquiry is not amounting to termination of service. The employer has suspended the workman from work, means relationship of employer and employee between the employer and the workman would continue.

Nonpayment of the suspension or subsistence allowance during the pendency of the departmental enquiry amounts to denial of reasonable opportunity to the workman. That question has been examined recently by the Hon"ble Apex Court in case of Capt. M. Paul Antony v. Bharat Goldmines Ltd., reported in 1999 LIC 1565. The Apex Court has held that the non-payment of the subsistence allowance during the period of suspension is violative of the Fundamental Right of life. The relevant observations made by the Hon"ble Apex Court in Paras 27, 28, 29, 30 and 31 are reproduced as under :

"27. The order of suspension does not put an end to an employee's service and he continues to be a member of the service, though he is not permitted to work and is paid only subsistence allowance which is less than his salary. (See : The State of Madhya Pradesh Vs. The State of Maharashtra and Others, .

28. Service Rules also usually provide for payment of salary at a reduced rate during the period of suspension. (See : Fundamental Rule, 53). This constitutes the "subsistence allowance". If there is no provision in the Rules applicable to a particular class of service for payment of salary at a reduced rate, the employer would be liable to pay full salary even during the period of suspension.

29. Exercise of right to suspend an employee may be justified on the facts of a particular case; instances, however, are not rare where officers have been found to be afflicted by "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of "subsistence allowance", so that the employee may sustain himself. This Court in O.P. Gupta Vs. Union of India (UOI) and Others, made the following observations with regard to subsistence allowance (Para 15 of AIR) :

An order of a suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in Khem Chand Vs. The Union of India (UOI)and Others, is that he continues to be a member of the Government service, but is not permitted to work and further during the period of suspension, he is paid only some allowance - generally called subsistence allowance - which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a Government servant injuriously. The very expression "subsistence allowance" has an undeniable penal significance. The dictionary meaning of the word "subsist" as given in Shorter Oxford English Dictionary, Vol. II at p. 2171 is "to remain alive as on food, to continue to exist"; "subsistence" means - means of

supporting life, especially a minimum livelihood.

30. If, therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension of subsistence allowance can be likened to show poisoning as the employee, if not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death.

31. On joining Government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. The Government only because it has the power to appoint does not become the master of the body and soul of the employee. The Government by providing job opportunities to its citizens only fulfils its obligations under the Constitution including the Directive Principles of the State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employees, like Instrumentalities of the Government or Statutory or Autonomous Corporations etc., is regulated by the terms of contract of service or Service Rules made by the Central or the State Government under the proviso to Article 309 of the Constitution or other Statutory Rules including Certified Standing Orders. The Fundamental Rights, including the Right to Life under Article 21 of the Constitution of India or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in the Service Rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in *State of Maharashtra Vs. Chandrabhan Tale*, struck down a service rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an employee placed under suspension. This decision was followed in *Fakirbhai Fulabhai Solanki Vs. Presiding Officer and Another*, and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by nonpayment of subsistence allowance and thereby, could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this, purpose, reliance was also placed on an earlier decision in *Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh*, ."

9. After dismissal of the workman, the workman raised Industrial dispute which referred for adjudication to the Labour Court. The preliminary issue required to be examined by the Labour Court as to whether the departmental enquiry held against the workman is legal and valid or not. In case, if the inquiry vitiated and held that it is contrary to the principle of natural justice, then, the employer can prove the charge against the workman before the Labour Court by leading proper evidence, then the. question would arise that once the inquiry is held to be bad, then dismissal order which was a result of inquiry must go and the workman is entitled at that stage relief of reinstatement and back wages. But because of right given to the employer to prove the misconduct by way of fresh enquiry

before the Labour Court, then during the pendency of reference, the workman is entitled for suspension allowance from the employer only on the ground that the departmental enquiry can be held by the employer provided that the workman must be in service, therefore, no enquiry can be conducted against the workman who is not in employment. This suspension allowance is awarded by the Court to the workman with a view to enable him to defend the proceedings before the Labour Court. Similarly, suspension in pending inquiry is also having a same object that the workman can properly defend against such departmental inquiry. That view has been taken by this Court in the matter of B. M. Mandalia v. Manager, reported in 2001 (3) GLH 595. In the said decision, the departmental inquiry was found to be defective and the employer was given an opportunity to prove misconduct of a workman before the Industrial Tribunal. During such intervening period, it has been held that during such intervening period, the workman is required to be treated under suspension and is required to be given subsistence allowance by applying the principle of "relate back". In Para 14 of the said decision, it has been observed by this Court as under :

"I have considered the submissions of both the learned Advocates, It is a settled principle of law that where the employer has failed to make inquiry before dismissing or discharging the workman, it is open for him to justify the action before the Tribunal by leading all relevant evidence before it. In such a case, the employer would not have the benefit which he had in cases where the domestic inquiries have been held to be legal and valid. In such cases, entire matter would be open before the Tribunal which will have jurisdiction not only to go into the limited question, but also to satisfy itself on the facts adduced before it by the employer and to come to the conclusion whether the order of dismissal or discharge was justified or not. In case of Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, , the Apex Court has held that the defective inquiry and no enquiry shall stand on the same footing as in case of "no inquiry" as well as in case of "defective inquiry", the Tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the Tribunal on facts that the order of dismissal and/or discharge from service was proper or not. In case of Motipur Sugar Factory (supra), the Apex Court has considered the reason for giving such an opportunity to the employer to prove and/or establish the misconduct before the Tribunal by leading oral as well as documentary evidence. It has been held that where the employee is dismissed by the employer without holding any departmental inquiry, the action of dismissal must be set aside on that sole ground. After setting aside of the order of dismissal order on that ground alone, the employer will proceed to held the inquiry against the delinquent employee and will pass the order of dismissal once again, and in that case, once again, the Tribunal will be required to examine the preliminary issue as to the legality and/or validity of the departmental inquiry. In that eventuality, employer will first be required to reinstate the workman in service before holding the inquiry. Therefore, applying the same analogy in case of "defective inquiry" before the Labour Court or the Tribunal, it is just and

proper to direct the respondent-Bank to treat the workman petitioner to have been suspended for the purpose of inquiry and to pay him some amount of subsistence allowance for the intervening period, because if the subsistence allowance is not paid pending the inquiry before the Tribunal or before the Labour Court or the Tribunal itself, then the workman will not be able to survive and to incur the expenses for defending the proceedings. These are the considerations and reasons for giving an opportunity to the employer to prove the misconduct of the workman before the Tribunal and in doing so, the Tribunal tries the merits of the matter itself. The approach of the Tribunal is in consistency with the law laid down by the Apex Court. However, since, the workman has not been ordered to be paid the subsistence allowance pending the proceedings from the date of the order till the date of impugned award, the respondent-Bank is required to be directed to pay to the petitioner-workman subsistence allowance pending the proceedings before the Tribunal from the date of the impugned order of dismissal till the date of the impugned award passed by the Tribunal by treating the workman to be under suspension for the intervening period in order to establish the relationship of master and servant between the Bank and the workman. Even as per the dicta of the Apex Court in case of Fakirbhai (supra), subsistence allowance will have to be paid during the intervening period. The liability and obligation of the employer under the Standing Orders to pay the subsistence allowance will be deemed to be continue beyond the date of termination until the misconduct is established. This flows by reading the principles laid down in case of Ludhbut Singh 1972 (1) LLJ 180 read with the case of Fakirbhai Fulabhai Solanki Vs. Presiding Officer and Another, . This amount of subsistence allowance will be payable for the period as provided in the Standing Orders. In case, where the Standing Orders are not providing for such payment during the period of suspension, where there are no Standing Orders, same shall be payable as per the relevant service regulations of the establishment. Hence, in view of the above discussion, where the employer is given such a concession, the fairness requires that the workman/employee is protected from starvation during the said period so that he can appropriately defend the proceedings against him. In case of Regional Director, Employees' State Insurance Corporation Vs. M/s. Popular Automobiles, , it has been observed that it has to be kept in view as noted earlier that the subsistence allowance paid to the suspended employee is not refundable or recoverable even though ultimately suspended employee is removed from service after the misconduct alleged against him is established against him. The principles laid down in the said decision shall apply to the subsistence allowance at the departmental level as also before the Tribunal since the inquiry before the Tribunal is being held at the instance of the employer, and therefore, the doctrine of relate back will not affect the grant of subsistence allowance, in any manner whatsoever."

10. When Industrial Dispute is pending before the Labour Court or Industrial Tribunal and the workman is concerned in dispute and the dispute is connected

with the misconduct or workman may be protected workman, then, for issuing the dismissal order against such workman, prior permission from the concerned Court is necessary either u/s 33(l)(b) or 33(3)(a) and (b) of the I. D. Act, 1947. At that occasion also, when permission application is filed before the concerned Court, the suspension allowance is required to be paid by the employer to such a workman on the ground that the workman shall have to be given reasonable opportunity to defend properly the permission application. That aspect has been examined by the Hon"ble Apex Court in case of Ram Lakhan v. Presiding Officer, reported in AIR 2000 SCW 1123. The relevant observations made in Para 21 are reproduced as under :

"21. Just as the employer has no control over the disposal of the application u/s 33(1) of the Industrial Disputes Act, so also the employee has no control over the disposal of that application. Whether the employee would be retained in service or removed would be dependent upon the fate of the application. While the Management can afford to wait for the disposal of that application, it would be impossible for an employee who survives only on his salary to wait for the disposal of that application for an indefinite period. It would not be possible for him to sustain himself. It is in this light that the right to receive reduced salary (subsistence allowance) for the period of suspension has to be read along with the right of the Management to place the employee under suspension pending disposal of the application u/s 33(1) of the Industrial Disputes Act. Thus, the right of Management to suspend and the right of the employee to receive subsistence allowance are intertwined and both must survive together."

In above referred decision, subsistence allowance was granted to the workman only on the ground, that during the inquiry either in departmental or before the concerned Court or during the permission application, the workman can properly defend such proceeding as workman having no control over the proceedings, so meanwhile, during such proceeding, the workman can maintain himself and family, otherwise, his family will be ruined or the entire family put in starvation. This is the real aim and object to give subsistence allowance during the pendency of such proceedings to avoid such situation. Similar situation will arise when the Labour Court has granted reinstatement in favour of the workman and such reinstatement is challenged by the employer before the higher forum, and if any stay is granted against such reinstatement, then, the workman remained without any salary and not able to receive any fruit of the order of reinstatement passed by the Labour Court. The employer challenged the order of Labour Court granting reinstatement with an interim prayer to stay the reinstatement, then it is the duty of the employer to pay wages to the workman for his survival and to defend the proceedings properly during the pendency of such proceedings. If no wages are paid after obtaining stay against the reinstatement, then the workman will be unable to defend the proceedings properly and in spite of having reinstatement order in his favour because of the stay, he is put in such an embarrassing situation that in absence of wages, how he will maintain his family and how he will defend the proceedings? That is how the law on this point has been amended

under the Central Act of I. D. Act, 1947 while incorporating Section 17B of the I. D. Act, 1947 which is entitling the workman to receive the last drawn monthly wages inclusive of the last drawn monthly wages inclusive of maintenance allowance, if any, during the pendency of the proceedings in the higher forum which amount is not recoverable or refundable. The Labour Court has granted reinstatement, then it is the duty of the employer either to implement the order of reinstatement or to pay the wages as a subsistence allowance to the workman. The object of Section 17B are reproduced as under :

"When Labour Court pass award of reinstatement, these are often contested by an employer in the Supreme Court or High Court. 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 wages last drawn by the workman concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or High Courts."

11. Section 17B of the I. D. Act has been interpreted by the Hon"ble Apex Court in case of Dena Bank v. Kiritkumar T. Patel, reported in 1997 (2) GLH 946 (SC). Relevant observations made by the Hon"ble Apex Court are reproduced as under :

"As indicated earlier, Section 17B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the award of a Labour Court or the Industrial Tribunal during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court. The object underlying the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or this Court. Since the payment is of such a character 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 services were terminated, and therefore, used the words "full wages last drawn". To read words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his services had not passed since it has been set aside by the award of the Labour Court or Industrial Tribunal would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is not refundable or recoverable in the event of the award being set aside, it would result in the employer being required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. We are unable to construe the provisions contained in Section 17B to cast such a burden on the employer. In our opinion, therefore, the words "full wages last drawn" must be given their plain and material meaning and they cannot be given the extended meaning as given by

the Karnataka High Court in Vishveswaraya Iron and Steel Ltd. (supra) or the Bombay High Court in Carona Sahu Co. Ltd. (supra),"

12. In view of the above discussion and considering the behind principle decided by the Apex Court, the whole object is that, pending proceeding, workman should not have to put in any embarrassing and helpless condition so he may not be able to defend the proceedings and survive because in each case, the right of employer has been recognized by the Court, then, a duty of employer in such a situation is also required to be recognized by the Court because livelihood of the workman is integral part of Article 21 of the Constitution of India which is protected fundamental right. If the Court will not protect the livelihood of the workman for which he legally is entitled on the basis of the order of reinstatement made by the Labour Court, then, it would be amounting to denial of the fundamental right guaranteed under Article 21 of the Constitution of India to the workman by the Court. This aspect has been taken into account by the Bombay High Court in recent decision in case of Standard Chartered Grindlays Bank Ltd. Vs. Govind Phopale and Another, :

"17. I need not stress the fact that wages is the real content of the Article 21. If we were to take out the wage content from this Article 21, it would be reduced to a dead letter not worth even for a decoration. In the absence of the source of livelihood which is protected by Article 21, the other fundamental rights would sound hollow and empty words and would collapse in no time as a dilapidated house. The workman and his family should not be made to starve merely on the pretext that proceedings u/s 33(2)(b) for approval of the action taken by employer is pending, though he is told by law that the jural relationship continues and he still carries the label that he is an employee of the applicant-employer before the Tribunal. This jural sense of employment must put bread in his empty belly. He cannot be denied the wage content of his jural relationship by drawing a fine distinction of law point that he has factually ceased to be in employment as the employer has already passed an order of dismissal/discharge, though he still continues to be in the employment of the employer in law. In the case of Fakirbhai 1986 (52) FLR 688 (SC), the Supreme Court was very much conscious of the delay in disposal of discharge/dismissal matters where the workmen concerned needed relief very badly. The Supreme Court, has therefore, considering the crucial aspect of the delay has given a great solace to the working class whose fate is covered u/s 33 of the Act as a whole not to be sub-divided by the sub-sections.

18. The aforesaid discussion is the essence of the wisdom which I have drawn from following a few recent judgments of the Supreme Court. I am not quoting the quotable quotes from the said judgments to state what is very well known and well established needing no elaboration; C.E.S.E. Ltd. v. Subhash Chandra Bose 1992 (64) FLR 248 (SC), in Para 30, at pages 355 and 356;

"..... The right to social justice is a fundamental right. Right to livelihood springs from the right to life guaranteed under Article 21. The health and strength of a

worker is an integral facet of right to life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means. To the tillers of the soil, wage earners, labourers, wood-cutters, rickshaw pullers, scavengers and hut-dwellers, the civil and political rights are mere cosmetic rights. Socio-economic and cultural rights are their means and relevant to them to realize the basic aspirations of meaningful right to life. The Universal Declaration of Human Rights, International Convention on Economic Social and Cultural Rights, recognize their needs which include right to food, clothing, housing, education, right to work, leisure, fair wages, decent working conditions, social security, right to physical or mental health, protection of their families as integral part of right to life. Our Constitution in the Preamble and Part IV reinforce them compendiously as socio-economic justice, a bedrock to an egalitarian social order. The right to social and economic justice is, thus, a fundamental right.

(iv) Consumer Education and Research Centre & Ors. v. Union of India & Ors. 1996 (72) FLR 479 : 1996 (2) LLN 1 in Paras 22 and 24 at page 18;

"22. The jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood to sustain the dignity of person and to live a life with dignity and equality.

24. The expression "life" assured in Article 21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure."

13. It is necessary to be noted that the respondent-workman has submitted an application dated 28-1-2003 to the Hon"ble Chief Justice of this Court that if his application is not decided on or before 20-2-2003, then, he will commit suicide on 20-2-2003 in the High Court Complex itself between 3-00 to 5-00 p.m. I have read his application wherein he has described his agony and starvation condition of his family without any wages though he has succeeded in two below Courts. He has also mentioned in his application that more than thirteen years have passed from the date of termination and yet he is not able to get reinstatement and per month wages. His application is forwarded by the office to this Court which is attached with the case papers. This is disclosing the mental condition of the workman and deteriorated condition of his family because of the legal fight since last 13 years with a giant company.

14. Therefore, considering the overall facts and circumstances of the present case, B.I.R. Act being separate Act where there is no such similar provision like

the I. D. Act, because it is a State Legislation and not the Central Legislation, in the peculiar facts and circumstances of the present case, this Court cannot throw away the present application merely because the B.I.R. Act does not provide for such relief like the I. D. Act, but this Court has to consider the case of the workman while exercising the powers under Arts. 226 and 227 of the Constitution of India. While considering the case of the applicant original workman under Article 226/227 of the Constitution of India, this Court may keep in mind the very same object and purpose for which Section 17B of the I. D. Act, has been enacted. Section 17B has been enacted or incorporated in the Industrial Disputes Act, 1947 with a view to provide some mandatory relief to the workman during the pendency of the petition which took long time to decide before the higher forum so the workman can properly defend the proceedings before the higher forum. In the instant case also, the workman in whose favour award of reinstatement has been made by the Labour Court in the year 1997 has yet not been reinstated in service till this date. This is one factor inspiring this Court to exercise the powers under Article 226/227 of the Constitution of India while keeping in view the aim and object of Section 17B of the I. D. Act, 1947 for giving some relief to a workman who has lost his vision since about one decade and who is unable to do any miscellaneous work. Another factor which is inspiring this Court to exercise such powers is that though the award of reinstatement has been stayed by this Court, this Court has not granted any relief qua reinstatement in favour of the workman. Admittedly, the workman has been paid Rs. 50,000-00 in lieu of back wages and not in lieu of reinstatement. Therefore, during the period of pendency of the petition before this Court, the workman has to survive for himself and for his family and for enabling him to survive during the pendency of this petition, I am exercising the powers under Article 226/227 of the Constitution of India in the peculiar facts and circumstances of this case.

15. It is required to be noted that this is the fight or litigation between poor and blind jhaduwala who is the employee and the giant company which is the employer. Absolutely, it is a fight between two unequal personalities wherein the workman is suffering in view of the pendency of the proceedings before this Court because of the stay granted against the reinstatement. Poor jhaduwala has been fighting and litigating for his right against the mighty company for almost 13 years and has lost his vision since about one decade, and admittedly, pendency of these proceedings before the higher forum would not, in any way, affect the petitioner but would certainly affect the poor workman, and therefore, I am of the opinion that this is the fit case for exercise of the powers under Article 226/227 of the Constitution of India.

16. Therefore, it is directed to the original petitioner to pay the last drawn monthly wages inclusive of dearness allowance and other benefits which were available to the respondent-workman on 25th June, 1990, with effect from the date of the order passed by the Labour Court concerned on 26th February, 1997 till 31st March, 2003 within three months from the date of receipt of copy of this order. It is further directed to the petitioner to pay such last drawn monthly

wages inclusive of dearness allowance and other benefits which were available to the respondent-workman on 25th June, 1990 to the respondent-workman regularly every month without fail during the pendency and final disposal of the proceedings arising from the present petition. Accordingly, interim order passed by this Court on 29-2-2000 is further modified as above.

17. It is clarified that this Court has not passed this order in exercise of the powers u/s 17B of the I. D. Act, 1947 but this Court has passed this order in exercise of the powers under Article 226 of the Constitution of India in the peculiar facts and circumstances of the present case. It is also clarified that this Court has not expressed any opinion as to whether Section 17B of the Industrial Disputes Act, 1947 is applicable to the present case or not. This Court has also not expressed any opinion on the two decisions of this Court which were relied upon by the learned Advocate Mr. Chauhan for the petitioner. This question has not at all been examined by this Court and the same has been kept open.

18. With these observations and directions, this Civil Application is disposed of with no order as to costs.

19. It was requested by the learned Advocate Mr. Chauhan for fixing the main matter for final hearing in the near future. The request made by Mr. Chauhan has not been objected by Mr. Jhala appearing for Mr. Yagnik for the respondent-workman. Therefore, considering the facts and circumstances of the case, office is directed to notify the main matter being Special Civil Application No. 5032 of 1998 for final hearing in the second week of September, 2003.