

(2011) 02 GUJ CK 0064
In the Gujarat High Court

Case No : Civil Application for Direction No. 15090 of 2010 in Special Civil
Application No. 6467 of 2010

Family Planning Association of India and Another	APPELLANT
Vs	
Pankaj Kumar K. Mashar and Others	RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

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

Citation : (2011) 02 GUJ CK 0064

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : A.K. Clerk, for the Appellant; Rajesh P. Mankad, for Respondent 1,
for the Respondent

Judgement

S.R. Brahmbhatt, J.—Rule. Mr. Rajesh P. Mankad waives service of notice of Rule.

2. The applicants-original Petitioners have taken out this application for appropriate direction in respect of their liability to pay the last drawn wages u/s 17B of the Industrial Disputes Act, 1947, as the main matter being S.C.A. No. 6467/2010 is admitted and it is awaiting its final disposal, wherein this Court (Coram: K.S. JHAVERI, J.) on 15.07.2010, issued Rule and granted interim relief, subject to compliance with provision of Section 17B of the I.D. Act, 1947. The counsels have not disputed the fact that out of three original Respondents workmen, one Respondent-workman namely, Ms. Parul Himmatlal Shah is paid and so far as Respondent No. 1 namely, Shri Pankajkumar K. Mashar is concerned, he is an advocate and, therefore, it is prayed that direction qua him may not now required to be implemented, as advocate is not entitled to receive wages u/s 17B of the I.D. Act. Shri Rajesh P. Mankad, learned advocate appearing for the workman concerned also could not dispute this proposition of law that the workman who is a practicing advocate now cannot seek benefit of 17B wages on the ground that he is not gainfully employed. Therefore, now the question revolves around the facts of Respondent Ms. Naynaben Hasmukhbhai

Modi, Respondent No. 3 herein above. The workman has filed affidavit on 15th July as per the submission of learned Counsel for the applicant-original Petitioner employer that the liability to pay 17B wages would accrue from the date of filing of the petition and reliance is placed upon the Division Bench judgment of this Court in case of "Candila Pharmaceuticals Ltd. And Jyotiben Harishbhai Pandit", reported in [2011 (128) FLR 182].

3. Shri Rajesh P. Mankad, learned Counsel for the workman relying upon oral order of this Court in *Leak Proof Engineering Works v. Gautambhai Jadavbhai Chauhan*" made in Letters Patent Appeal No. 2132 of 2010 In Civil Application - For Direction No. 5025 of 2010 In S.C.A. No. 2424 of 2009 With C.A. No. 10371/2010 In L.P.A. No. 2132/2010, dated 10.01.2011, submitted that in fact the liability to pay wages would arise from the date of the publication of award and accordingly he submitted that the direction should be for payment from the date of the publication of award. He further submitted that the award in this case is dated 30.01.2010 which was published on 19th February, 2010 and the notice requesting compliance with the award was made on 19.03.2010, the petition challenging the award appears to have been filed on 08.05.2010. On 15.06.2010, it was circulated and notice was issued on 15.06.2010 which was made returnable on 15.07.2010. The order staying the award had been passed. Therefore, relying upon the order in *Leak Proof Engineering Works v. Gautambhai Jadavbhai Chauhan* (supra), Shri Mankad contended that this Court may order payment of wages u/s 17B from the date of publication of award. While resisting this contention Shri A.K. Clerk, learned advocate for the applicant-employer contended that the oral order relied upon by the Respondent" workman is passed, when the Division Bench's earlier decision was not brought to the notice of the Division Bench passing the order and the Division Bench's order made in *Candila Pharmaceuticals Ltd. And Jyotiben Harishbhai Pandit* (supra) passed after discussing the High Court's decision as could be seen from paragraph-6 from the Division Bench order and therefore, the workmen's entitlement to receive last drawn wages u/s 17B of the I.D. Act, 1947 would be only from the date of filing of the petition and not prior thereto.

4. This Court has heard learned advocate appearing for the parties and perused the application, the scheme of the I.D. Act is by now very clear that the workman is entitled to receive 17B wages only on fulfilling certain conditions and as per the provision mentioned therein, the workman is entitled to receive 17B wages during pendency of the petition containing challenge to the award of reinstatement, meaning thereby in any eventuality when there is no proceeding pending, it is for the workman to invoke appropriate remedy for enforcing the award but once the petition is filed and the employer has invoked remedy under Articles 226 and 227 of the Constitution of India and when the Court has ordered interim relief on recording prima facie satisfaction in respect of lacuna in the award, then the workman's right to receive wages would not govern by Section 17B of the I.D. Act, during pendency of the petition. Therefore, the Division Bench's judgment in *Candila Pharmaceuticals Ltd. And Jyotiben Harishbhai*

Pandit (supra), which is based upon the Apex Court decision as discussed herein above, would govern facts of the present case also. The oral order passed by the Division Bench, in my view cannot be said to be laying down proposition of law which is sought to be canvassed as it is in the facts and circumstances of the said case. Besides the Division Bench's ratio appears to have not been brought to the notice of the Division Bench passing the oral order.

5. In my view, therefore, the direction qua workman Ms. Naynaben Hasmukhbhai Modi is required to be issued. She would be entitled to receive wages from the date of the filing of the petition and so far as the period from publication of award till filing of the petition i.e. 08.05.2010, is concerned it is for the workman to work out its own remedy.

6. With this direction the application is partly allowed. The payment is to be made within one month so that, if the order is required to be challenged sufficient time is available to the workman. Rule made absolute to the aforesaid extent. No cost.