

(2009) 04 CAL CK 0043

In the Calcutta High Court

Case No : Writ Petition No. 21245 (W) of 2007

Gammon Nirman Ltd.

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

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

Citation : (2009) 122 FLR 156

Hon'ble Judges : Dipankar Dutta, J

Bench : Single Bench

Advocate : L.C. Halder and R. Guha Thakur, for the Appellant; Ashis Kumar Das for the State, Jayanta Das Gupta, N. Bhattacharjee and Chacko Mathai for the Respondent No. 3, for the Respondent

Judgement

Dipankar Dutta, J.—The workman (respondent No. 3) was terminated which resulted in an industrial dispute between him and the employer (petitioner). The Industrial Tribunal by its award set aside the termination and directed reinstatement of the workman in service with 50% back wages. The award of the Tribunal is the subject-matter of challenge in this writ petition, filed on 24th September, 2007.

2. The workman has now prayed for relief u/s 17-B of the Industrial Disputes Act. When the prayer of the workman was initially taken up for consideration, a submission was made on behalf of the employer, that the workman may be directed to work for the employer to earn his wages at the same rate at which he was initially appointed. This Court had enquired from learned Counsel for the employer regarding the rate at which stenographers are being presently paid. An affidavit has since been filed where it has been stated that the employer has no other stenographer on its roll and that question of paying the workman at the present rate stenographers are drawing pay would not arise.

3. This Court has considered the submission made on behalf of the employer. It

is of the considered view that asking the workman to work now and to make payment to him at the rate he was initially appointed would amount to "forced labour". If the employer does not have the means to pay the workman at a reasonable rate, this Court while hearing a prayer u/s 17-B of the Act would not compel the workman to work for so less. The prayer of the employer thus stands rejected.

4. Since the workman has stated on affidavit that he is presently unemployed and the company has failed to rebut such assertion of the workman by producing reliable evidence, this Court is inclined to hold that the workman is entitled to relief u/s 17-B of the Act.

5. Parties, however, are not ad idem on the quantum of wages drawn by the workman at the time of termination of his service. Now, comes the question of deciding relief to be granted to him. Learned Counsel for the employer has invited the attention of the Court to the deposition of the workman in connection with proceedings for interim relief, wherein he stated that he received a net salary of Rs. 1972/- for the month of June, 1992. To this, learned Counsel for the workman has drawn the Court's attention to his application in connection with interim relief. It appears from paragraph 5 of the application that the workman had stated that while he was in service, he was drawing a salary of Rs. 2035/-. He has also invited the Court's attention to the deposition of the witness of the employer viz. Shri Rahul Srivastava, who stated that the workman was given monthly consolidated salary of Rs. 2300/- per month with Sikkim allowance of Rs. 250/- per month While he was continuing in service in Gammon India Limited.

6. It would appear from the above that the quantum of wages last drawn by the workman varies according to the contention raised in the application for interim relief as well as in the depositions of the workman and the employer's witness.

7. In proceedings under Article 226 of the Constitution of India, it would not be open to the Writ Court to embark upon a fact finding process to ascertain the quantum of wages drawn by the workman. Since the workman himself in course of his deposition stated that he was drawing net salary of Rs. 1972/- in June, 1992 i.e. immediately preceding his termination, it is held that the petitioner would be entitled to Rs. 1972/- towards relief u/s 17-B of the Act during the time the present petition is pending before this Court.

8. The employer is directed to compute the workman's entitlement right from 24th September, 2007 till April, 2009 and to pay to the workman the entire amount of arrears as well as payment for the next three days by 30th June, 2009 positively. The employer shall also be under an obligation to make payment of current dues starting from May, 2009 till such time the writ petition is disposed of by paying to the petitioner the aforesaid amount of Rs. 1972/- monthly, as and when the same falls due.

9. It is made clear that in the event of default of payment as directed above, the workman shall be entitled to enforce the award passed by the Tribunal in

accordance with law.

Subject to payment as above, the impugned award of the Tribunal shall remain stayed.

The respondents shall be at liberty to file affidavit-in-opposition to the writ petition within three weeks after re-opening of the Court after Summer Vacation; reply, if any, thereto be filed by the petitioner within two weeks thereafter.

10. The writ petition shall be listed under the heading "For Hearing" in the monthly list of July, 2009.

Urgent Xerox certified copy of this order, if applied for, be furnished to the parties within 3 days from date of putting in the requisites therefore.