

(2008) 04 CAL CK 0062
In the Calcutta High Court

Case No : Writ Petition No. 23839 (W) of 2005 and CAN No. 1437 of 2006

GE India Industrial Pvt. Ltd.

APPELLANT

Vs

Second Labour Court and Others

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2008) 4 CHN 338 : (2008) 119 FLR 903 : (2009) 2 LLJ 214

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : D.K. Ghosh and R. De, for the Appellant; Narayan Rakshit, for the Respondent

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.—This is an application filed by the respondent No. 3 for payment of full wages under the provisions of Section 17B of the Industrial Disputes Act, 1947. It is stated in the above application that the applicant is still unemployed.

2. It is submitted on behalf of the applicant that once the conditions prescribed in Section 17B of the Industrial Disputes Act, 1947 are complied with, then it is not open to a Writ Court to reject the application of the workman for granting full wages to him during the pendency of the writ application.

3. Reliance is placed upon the decisions of Dena Bank v. Kiriti Kumar T. Patel reported in 1998(78) FLR 45, Ch. Saraiah Vs. Executive Engineer, Panchayat Raj Department and Another, and Neelaiah G.M. v. Karnataka State Tourism Development Corporation and Anr., in support of the above submission.

4. Appearing on behalf of the petitioner-company Mr. D.K. Ghosh draws the attention of this Court towards the deposition of the respondent No. 3 dated August 1, 2003 before the learned Court below to show that no document was produced by the respondent No. 3 to establish that he had been appointed by the

petitioner-company or he had received salary from the petitioner-company or services of the respondent No. 3 had been terminated by issuing a letter.

5. It is submitted by Mr. Ghosh that in absence of such material, it becomes very clear that there is nothing to show that the workman was ever in any employment under the petitioner-company. Therefore, no order can be passed in connection with the application of the respondent No. 3 filed under the provisions of Section 17B of the Industrial Disputes Act, 1947.

6. Reliance is placed upon the decision of Carrit Moran and Co. Pvt. Ltd. Vs. State of W.B. and Others, , in support of his submission.

7. In reply to the submissions of Mr. D.K. Ghosh, learned Advocate for the petitioner-company, it is submitted on behalf of the applicant/respondent No. 3 that the decision of Carrit Moran and Co. Pvt. Ltd. (supra) is per incuriam because the same runs counter to the provisions of Section 17B of the Industrial Disputes Act.

8. I have given anxious consideration to the submissions made on behalf of the respective parties and I have taken into consideration the facts and circumstances of the case. It is not in dispute that by virtue of the impugned award, the petitioner-company was directed to reinstate the respondent No. 3 in the services of the petitioner-company with payment of back wages. It is also not in dispute that the respondent No. 3 in his deposition filed to produce any document in support of his appointment, payment of remuneration and order of termination in connection with the services under the petitioner-company.

9. In order to adjudicate the point of law involved in this matter on the basis of the above admitted facts, the relevant portions of the decision of Carrit Moran and Co. Put. Ltd. (supra) are quoted below:

It is the contention of the learned Advocate appearing on behalf of the appellant that there is not a single scrap of paper to show that the workman received any amount of salary wages from the company. It is further pointed out by the learned Advocate appearing on behalf of the appellant that there is no order of termination from the employment. In absence of such materials it becomes very clear that there is nothing to show that the workman was ever in any employment of the company.

Learned Advocate appearing for the workman submits that although there is no written order of termination of service and although there is no paper to show that such salary was drawn by the .workman from the company, even then he is entitled to such relief u/s 17B of the Industrial Disputes Act, 1947 since he worked in the company as a driver.

We are unable to accept such contention as we have already said that there is no such paper to show that there was any relationship between employer and employee in the present case. In our considered view, the order of the learned Single Judge of this Court dated May 3, 2007, should be set aside. Accordingly,

we allow the appeal and set aside the impugned order passed by the learned Single Judge of this Court without any order as to costs.

10. In view of the above certain principles of law, I find substance on the submissions made on behalf of the petitioner-company that workman is not entitled to any relief u/s 17B of the Industrial Disputes Act, 1947.

11. With regard to the decision of Dena Bank (supra), I find that the question that fell for consideration in that appeal was whether the expression "full wages last drawn" in Section 17B of the Industrial Disputes Act, 1947 means wages drawn by a workman at the time of termination of his employment. In the matter of C.M. Sarafah (supra), I find that the fact of absence of letter of appointment, payment of remuneration or written order of termination were not taken into consideration. Therefore, in view of the facts and circumstances involved in the instant case those decisions are not applicable in this case. In the matter of Neelaiah G.M. (supra), I find that the matter was decided on a separate issue. Therefore, that decision has no manner of application in this case.

12. In view of the above, this application filed by the respondent No. 3 fails.

13. Let urgent xerox certified copy of the order be supplied to the learned Advocates for the respective parties on their usual undertaking.