
(2013) 01 MP CK 0032
In the Madhya Pradesh High Court
Case No : W.A. No. 1463 of 2012

General Secretary

APPELLANT

Vs

Deputy General Manager

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Industrial Disputes Act, 1947 — Section 10, 17B

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2013) ILR (MP) 273

Hon'ble Judges : M.A. Siddiqui, J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Brian D'Silva, R.C. Shrivastava and V. Bhide, for the Appellant;
Indira Nair, for the Respondent

Final Decision : Disposed Off

Judgement

Krishn Kumar Lahoti, J.—This intra court appeal is directed u/s 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Pith Ko Appeal) Adhiniyam, 2005, assailing the order dated 14.12.10 passed in W.P. No. 13240/2012 by which the learned Single Judge modified the earlier order passed in W.P. 89/12 to the effect that in case the employees are not reinstated by the respondent, the wages last drawn would be paid to the employees by the employer. The amount would be paid directly to the employees as it is by way of subsistence allowance. This order is under challenge in this appeal. Learned counsel for the appellant submitted that by order dated 18.9.12, the writ court while issuing show cause notice to the appellant herein directed for the compliance of Section 17-B of the Industrial Disputes Act, 1947 with a further direction that in case the employees are not reinstated, wages payable at current rate be paid to the employees but by the impugned order, this order has been modified directing the employer to make payment of last wages drawn in case the employees are not reinstated. The effect of order would be that the employees would get very meagre amount

of Rs. 40/- per day which is insufficient for survival of the employees and their family. It is submitted that the order may be modified and reasonable amount i.e. current wages may be directed to be paid by the respondent employer.

2. Smt. Indira Nair, learned Senior Counsel appearing for the respondent opposed the aforesaid contention and submitted that as per Section 17-B of the Industrial Disputes Act, only wages last drawn by the employees at the time of retrenchment can be directed to be paid. In case employer decides not to reinstate the employee in compliance of the award passed by Labour Court. The current wages cannot be directed to be paid except certain allowance which are payable under law. It is submitted that order is in accordance with law and need not be interfered. She has placed reliance on the judgment of Apex Court in AIR 1998 511 (SC) and Regional Authority, Dena Bank and Another Vs. Ghanshyam, to substantiate her contention.

3. In reply to this Shri Brian D'Silva, learned counsel appearing for the appellant would submit that the powers are vested with the court to modify the relief and to make payment of a reasonable amount as has been directed by the Apex Court in Employers Management Central Plan and design (I) Ltd. Vs. Alleged workmen (2007) 15 SCC 677. It is submitted that Rs. 40/- is very meager amount and should be enhanced to current wages payable to the employees of the respondent employer.

4. To appreciate the aforesaid fact, it would be appropriate if the factual position of the present case is stated.

5. Near about 100 workmen of respondent were allegedly retrenched on 19.8.1994. They had approached Government of India for a reference u/s 10 of Industrial Disputes Act for adjudication by the Central Government Industrial Tribunal cum Labour Court (CGIT), Jabalpur. The matter was referred by the Government of India, Ministry of Labour vide its notification dated 23.5.1995. The reference reads as under:

Whether the action of the management of Western Coalfields Ltd. Nagpur (Pench Area) in terminating the services of Sh. Rajnandan and 99 others (list enclosed) w.e.f. 19th August 1994 and ordering recovery of money received from them from the date of reinstatement to the date of release from Pench Area (East) is legal and justified? If not what relief the workmen are entitled to?

6. The labour court after hearing both the parties had passed an award on 2/3/2012 directing reinstatement of all the workmen w.e.f. 19.8.1994 with all back wages and other consequential benefits. It was further directed that the management shall not be entitled to recover the money received by the workman from the date of reinstatement to the date of re-leaving from Pench Area (East) and to allow all the workmen to join on the new place of transfer within one month from the date of receipt of the award by the Union/workmen. This award of the labour court was assailed by the respondent before the Writ Court in W.P. 13240/12.

7. On 18.9.2012 when the matter was listed for hearing on admission, Writ court directed thus:

In the meanwhile, the operation of the award shall remain in abeyance on compliance of the provisions of Section 17-B of the Industrial Dispute Act. In case the reinstatement is not done, the wages payable at the current rate be paid to the employees.

8. The respondent herein had moved an application for modification of the order. The learned Single Judge after hearing both the parties by an order dated 14.12.2012 modified the earlier order and directed thus:

In view of the foregoing discussions, the order dated 8.9.2012 is modified to the effect that in case the reinstatement is not ordered by the petitioner, the wages last drawn would be paid to the employees by the petitioner. The amount will not be deposited in the CCD of the Court, but it will be paid directly to the employees because in fact it has to be treated as subsistence allowance for survival of the employees. As far as the application for appropriate direction is concerned, the same stands disposed of. The other writ petitions are different in nature and, therefore, are not to be tagged with this writ petition. This order is under challenge in this appeal.

9. Now to appreciate the rival contention of the parties it would be appropriate if the statutory provision as contained u/s 17-B of the Industrial Disputes Act is referred which reads thus:

Section 17-B [Payment of full wages to workman pending proceedings in higher courts:-Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.

10. The aforesaid provision specifically provides that where the Labour Court by its award directs reinstatement of any workmen and the employer prefers any proceedings against such award in the High court the employer shall be liable to pay such workman during the pendency of such proceedings in High Court, wages last drawn by him inclusive of maintenance allowance admissible to him under rule. If workman was not employed anywhere else during such period an

affidavit by such workmen has to be filed to that effect in such court. In this case it is not in dispute that such an affidavit was filed by the appellants herein and there are no allegations that workmen were in employment elsewhere during the period i.e. from the date of award passed by the Labour Court and impugned order passed by the Writ Court. The respondent employer has chosen not to reinstate the employees but has chosen to make payment of last wages drawn.

11. The legal position has been considered by the Apex court in Dena bank Vs. Kirti Kumar (Supra) wherein the Apex Court considered the effect of Section 17-B of Industrial Disputes Act and held that the workman be paid the full amount of last wages drawn. The Apex Court held that the workman was entitled for the wages last drawn at the time of retrenchment from the date of the award till the decision by the High Court. The same law has been reiterated by the Apex Court in Dena Bank Vs. Ghanshyam (supra).

12. Though in Employers Management Central Plan and Design (I) Ltd., the Apex Court has held that the workmen concerned can be paid current wages at the rate of wages last drawn by them with effect from a certain date. But it appears that while considering the matter the attention of the Apex court was not drawn to the earlier judgments of the Apex court in Dena Bank which are referred herein above.

13. In Dena Bank Vs. Kirti Kumar (supra), the Apex court in para 23 has considered the law in detail and held thus:

As regards the powers of the High Court and the Supreme Court under Articles 226 and 136 of the Constitution, it may be stated that Section 17-B, by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge to the award of the Labour Court. Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of the award being set aside, does not in any way preclude the High Court or the Supreme Court to pass an order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a direction would be *dehors* the provisions contained in Section 17-B and while giving the direction, the court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. that in exercise of the power under Articles 226 and 136 of the Constitution, an order can be passed denying the workman the benefit granted u/s 17-B. The conferment of such a right u/s 17-B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution.

14. The aforesaid judgment specifically provides that the High Court or Supreme Court shall not in any way preclude to pass an order directing payment of a higher amount to the workman if such higher amount is considered necessary in

the interest of justice. Such a direction would be dehors the provisions contained in Section 17-B and while issuing direction the court may also direct regarding refund or recovery of the excess amount in the event of award being set aside. So it is apparent that the Apex court has given discretion to the High Court in respect of passing appropriate order, considering the fact and circumstances of the case to make payment of higher amount to the workman if it is necessary in the facts and circumstances of the case.

15. Recently in *Kaivalyadham Employees Association Vs. Kaivalyadham S.M.Y.M. Samity*, the Apex Court held thus:

In contrast, Section 17-B provides in unambiguous terms that if an award for reinstatement of a workman is stayed at the instance of the employer, either by the High Court or the Supreme Court, the employer will be liable to pay to the workman during the pendency of the proceedings before the High Court or the Supreme Court full wages as last drawn by him, including any maintenance allowance admissible to him under any Rule, if the workman had not been gainfully employed elsewhere during the said period.

16. In the present case, as per the statement of the learned counsel for the respondent, the appellant is entitled for basic grade at the rate of Rs. 68.91 alongwith other allowances. A tabulation chart has been produced before us showing that for 89 days each employee would get Rs. 6550.51 paise. From the perusal of the aforesaid we find that a reasonable amount has been paid to the employees by the respondent. Apart from this, the learned Single Judge has fixed the case for hearing on 12.2.2013 and it is expected that matter would be heard on the aforesaid date by the Single Bench and looking to the short point involved in this case, matter can be decided expeditiously.

17. The respondent has not paid the appellant herein the last wages drawn from the date of award till the passing of the order by the Writ court. In the aforesaid circumstances, if the aforesaid amount is paid, the appellant herein would get a reasonable amount which would be sufficient for their subsistence.

18. In the aforesaid circumstances, we find that at present there is no necessity of passing an order for some higher wages vis-a-vis of the last wages drawn by the appellant. Apart from this the order passed by the Single Bench deserves to be clarified to the extent that appellant herein would be entitled for last wages drawn alongwith necessary allowances from the date of award till the decision by the Writ court for the compliance of Section 17-B of Industrial Disputes Act.

19. Accordingly, we dispose of this appeal with following directions:

(a) The appellant would be entitled for last wages drawn from the date of award passed by CGIT till the decision of the Writ Court in compliance of Section 17-B of the Industrial Disputes Act.

(b) The last wages drawn would include V.D.A., S.D.A. and other allowances as are permissible to the appellants.

(c) The aforesaid would be paid to the appellant within a period of 30 days from today after due calculation.

(d) We request learned Single Judge to expedite the hearing of the petition.

With the aforesaid direction this Writ Appeal is finally disposed of with no order as to costs.