

(2015) 07 GUJ CK 0060

In the Gujarat High Court

Case No : Civil Application (For Direction) No. 7640 of 2015 in Spl. C.A. No. 17091 of 2011

Govindbhai Punambhai Vaghela

APPELLANT

Vs

Chief Manager and Others

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 17-B

Citation : (2015) 147 FLR 928 : (2015) 3 GLR 1972 : (2016) 1 LLN 402 : (2016) 1 SCT 379

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

Bench : Single Bench

Advocate : Y.V. Shah, for the Appellant; Darsnan M. Parikh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J—Heard learned Counsels for the parties. Rule. Shri Parikh, learned advocate waives service of notice of Rule on behalf of opponent Nos. 1-2. By consent rule is fixed forthwith.

2. The applicant - original respondent in Special Civil Application No. 17091 of 2011 has approached this Court by way of this application with following prayers:

"(A) Be pleased either to direct the opponent-Bank to pay wages in accordance with the provisions of Sec. 17-B of the I.D. Act, 1947 or to reinstate the applicant peon w.e.f. 26-5-1994 in service, failing which, be pleased to dismiss the aforesaid Special Civil Application, And or

(B) Alternative be pleased to fix early date of final hearing of the aforesaid Special Civil Application in the interest of justice.

(C) Be pleased to allow this Civil Application;

(D) Grant such other and further relief that may be deemed fit and proper in the

facts and circumstances of the case."

Thus, what is essentially under challenge is that the workman be paid last drawn wages during the pendency of the main matter.

3. The application is sought to be resisted by filing affidavit, in which reference is made of the earlier proceedings and attempt to receive such benefits. In order to indicate the real contention in actual wording, it is proper to set out the paragraphs containing these contentions from reply, which read as under:

"3. Now, the applicant has preferred this application, ostensibly to get Sec. 17-B wages, but for a real purpose of getting the main matter fixed for final hearing. The relief 6(B) prayed for in the application reads as under:

(B) Alternative be pleased to fix early date of final hearing of the aforesaid Special Civil Application in the interest of justice.

4. The Bank has no objection to fixing early date of hearing of the matter and final disposal of the main petition. In fact, I am informed by the Bank's lawyer that when this application came up for hearing on 14-7-2015, he had requested the Hon''ble Court to fix the main matter, but the Advocate for the applicant disagreed to the suggestion and insisted that an order be passed only on the application under Sec. 17-B of the I.D. Act. It is clear now that the applicant does not want to proceed with the main matter but earn only idle wages. This is not the intention of the provision under which he is seeking relief.

5. I state that the applicant could not assail the affidavit filed on behalf of the Bank for more than 3 years and therefore did not seek any relief from the Hon''ble Court. Even in this application, the applicant has failed to plead or prove that circumstances have changed or that despite various attempts, he is not in a position to get any employment. The applicant cannot be permitted to sit idle and seek wages under Sec. 17-B. The intentions of the applicant are not Hon''ble, and therefore, also, he cannot be granted relief 6(A) as prayed for or otherwise.

6. The application is required to be considered in the aforesaid backdrop.

7. Except the statements, which are specifically admitted to be true herein, the rest of the statements made and contentions raised in the Sec. 17-B application are categorically denied, as if the same are set out and traversed herein.

8. I state that I am filing this affidavit to oppose grant of idle wages under Sec. 17-B to the respondent No. 1 in the facts of the case.

9. I state that the respondent No. 1 ceased to be in services of the Bank on voluntary cessation of service because of his unauthorized absence in 1994.

10. The respondent No. 1 has survived for nearly 18 years without the service with the Bank. He has been carrying on a small business of selling vegetables at Salun since many years and has been earning his living for so many years. It

was only after the service of the summons of the writ of this Hon"ble Court in the present petition that the applicant stopped sitting personally at the vegetable stall and only his son had been sitting attending to the stall, till filing of the earlier affidavit dated 27-3-2012. I state that thereafter, again the applicant started sitting at the said stall and carrying on the business of vegetable stall till before filing of this application."

4. Learned Counsel appearing for the applicant invited this Court's attention to the decisions rendered in case of Gopalbhai Meghajibhai Kantia Vs. Superintending Engineer, (2008) 119 FLR 832 : (2008) 3 GLR 2200 : (2009) 2 LLJ 225 and in case of Bhanulal Khimjibhai Solanki Vs. Deputy Executive Engineer, (2004) 24 GLH 375 : (2005) 1 LLJ 655 , and decision in case of Babubhai C. Kachhadiya Vs. Rajkot Municipal Corporation, (2001) 91 FLR 159 : (2002) 1 LLJ 1138 to support his contention that averments qua workman being engaged in vegetables vending, even if it is said to be correct, would be of no avail to the employer in denying the wages, as the same would not be a gainful employment so as to deny said benefits to the workman.

5. It is further submitted on behalf of the workman concerned that the workman is ready and willing to resume his duty if he is being reinstated without prejudice to the rights and contentions of both the sides, and in that case, the Bank will not have to term Sec. 17-B wages as idle wages and therefore, the Court may pass appropriate order allowing the Civil Application and directing the petitioner-Bank to pay last drawn wages along with its arrears and fix the main matter for disposal thereafter.

6. Learned Counsel appearing for the opponent-original petitioner invited this Court's attention to the prayer clause and urged that the Court may not direct the Bank to make payment of idle wages to employee-workman and he therefore, invited this Court's attention to the decision rendered by the Supreme Court in case of North East Karnataka Road Transport Corporation Vs. M. Nagangouda, AIR 2007 SC 973 : (2007) 112 FLR 887 : (2007) 2 JT 265 : (2007) 1 LLJ 1013 : (2007) 1 SCALE 125 : (2007) 10 SCC 765 : (2008) 1 SCC(L&S) 718 : (2007) 1 SCR 282 : (2007) 3 SLJ 50 : (2007) AIRSCW 736 : (2007) 1 Supreme 759 and decision in case of Metropolitan Transport Corporation Vs. V. Venkatesan, AIR 2010 SC 206 : (2009) 122 FLR 939 : (2009) 11 JT 96 : (2009) 4 LLJ 305 : (2009) 11 SCALE 50 : (2009) 9 SCC 601 : (2009) 2 SCC(L&S) 719 : (2009) 12 SCR 583 : (2010) 3 SLJ 207 : (2009) 5 SLR 775 : (2009) 8 UJ 3975 and submitted that fine distinction sought, if attached to this ratio in the judgment cited at Bar in case of Gopalbhai Meghajibhai (supra), may not persuade to hold otherwise as the distinction between the stage of back wages at the end of Labour Court or Industrial Tribunal and 17-B consideration, cannot be of much avail to the workman when the real issue is in respect of the non-employment or of self-employment or in the employment.

7. Learned Counsel appearing for the respondent bank invited this Court's attention to decision rendered by Supreme Court in case of Kanjibhai Punjabhai

Parmar Vs. State of Gujarat, (2005) 105 FLR 582 : (2005) 1 GLR 232 , and decision in case of Gujarat State Road Transport Corporation Vs. Ambaram M. Chaudhari and submitted that in the event the Court comes to the conclusion for granting the prayer and allowing this Civil Application, then also, the Court may take into consideration the overall facts and circumstances for ordering arrears of Sec. 17-B wages from the particular date and reliance was placed in the observations from Paragraph No. 24 onwards in the judgment of Kanjibhai (supra).

8. This Court is of the view that application is required to be allowed for the following reasons.

9. The plain and simple language of Sec. 17-B leaves no room of doubt that the duty is cast upon the employer towards workman respondent in a petition in compliance with Sec. 17-B of the I.D. Act from the date workman filed affidavit qua he being not gainfully employed. This proposition cannot be negated with by any Court as the same being a self-explanatory and clear in its purport. The legislative intent, as expressed in Sec. 17-B needs no interpretation much less any interpretation, which may act as detrimental to the workman's position when he is called upon to sustain himself in the litigation whereunder the order of his reinstatement is under challenge in the Superior Court by his employer. This intention of legislature cannot be whittled down in any manner in case if the conditions laid in the Sections are fulfilled. Therefore, there are number of judgments to the effect that without paying the Sec. 17-B wages, employer cannot insist for even conducting the main matter.

10. Bearing this principle in mind, now if one examine the decisions rendered by the Supreme Court in case of North East Karnataka Road Transport (supra) and Metropolitan Transport Corporation (supra), one can say that the proposition of law laid down thereunder is in the first instance qua guidance to the Courts while examining the issue qua back wages, which is admittedly one recognized to be a discretion of the Court, which cannot be equated with statutory mandate as envisaged in Sec. 17-B of the I.D. Act, therefore, ratio laid down in case of Bhanulal Khimjibhai Solanki (supra) and observed that their existed a requirement of due compliance with the statutory provisions, which would not brook any impediment on account of specious plea of workman not being establishing that he is not gainfully employed. The plain and simple language of Sec. 17-B of the I.D. Act would indicate that in an eventuality of employer challenging the order of reinstatement in the Superior Court, the employee-workman is entitled to receive the last drawn wages for sustaining himself and the stoppage thereof is only an exception where the Court will have to record its satisfaction that employer has established beyond doubt that the employee-workman is or was in fact "gainful employed" during that period. In absence of any such satisfaction, the flow of Sec. 17-B wages is not to be interrupted as it is mandated by the statute.

11. It is also required to be noted that the proposition of gainful employment is a

very important proposition and so far no judgment is cited to indicate that the gainful employment is to be understood in any other manner. The Supreme Court judgments cited at Bar on behalf of the Bank as it is observed hereinabove were in respect of the Court's exercise of its discretion for granting back wages. That discretion is not to be read into the mandatory provisions of Sec. 17-B of the I.D. Act. Bearing that principle in mind, the controversy is required to be examined. The question arises as to whether the vegetables vending help rendered by the applicant to his family can be treated as gainful employment in light of the decisions cited at Bar, the answer is emphatic "No". The phrase "gainful employment" would pre-eminently indicate that workman is earning sufficient to compensate his family, if he being not reinstated. The duty is cast upon the employer to establish this factor and in the instant case, the Court is of the view that Bank has failed in establishing this case and therefore, this Civil Application is required to be allowed.

12. While granting this Civil Application, the Court is inclined to issue following directions, which may be complied with by the Bank: The opponent herein-original petitioner bank is hereby directed to calculate and pay the arrears of last drawn wages to the workman from the date of filing of affidavit i.e. 10-2-2012 till the actual payment. The actual payment be made on or before 10-8-2015, and thereafter, keep on paying the wages on or before 7th of every month. The arrears shall include the wages to be paid for the month of July, 2015 itself and 10 days of August, 2015 also. The employer Bank be at liberty to intimate the workman for discharging his duties and same will be without prejudice to the rights and contentions of both the sides so as to take services from the employee for the payment being made to him. The main matter being Special Civil Application No. 17091 of 2011 is ordered to be fixed for final hearing on 26-8-2015 as the said date is suitable to Counsels for the parties. In the result, the Civil Application is allowed to aforesaid extent. Rule is made absolute. However, there shall be no order as to costs.