
(2009) 03 RAJ CK 0004
In the Rajasthan High Court

Granite (India) Ltd.

APPELLANT

Vs

Judge, Industrial Tribunal and Others

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2010) 1 RLW 181 : (2009) 2 WLN 79

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Judgement

Mohammad Rafiq, J.—Heard learned Counsel for the parties. This writ petition has been filed by the petitioner Granite (India) Ltd., Alwar challenging the notification dt. 03.11.1989 and corrigendum thereto vide subsequent notification dt. 18.01.1990 by which industrial dispute has been referred for adjudication with the prayer that such notifications be quashed and set aside and alternatively also challenging the award dt. 21.11.1998 passed by Industrial Tribunal, Bharatpur.

2. This Court by its order dt. 20.04.2000 while issuing notice to the respondents-workmen passed ad interim ex-parte stay order staying operation of the award. The respondents-workmen filed application u/s 17-B of the Industrial Disputes Act (for short "the Act").

3. Application u/s 17-B of the Act was contested by the petitioner, who contended that in peculiar facts of the present case, they could not be required to pay the last wages drawn by the workmen in terms of Section 17- B of the Act. This Court after considering the law laid down Dena Bank v. Kirtikumar T. Patel 1992 (2) SCC 106 and Division Bench judgment of this Court in Ramdhan v. Judge, Labour Court No. 2, Jaipur. 2003 (1) RLR 548 and another Division Bench judgment of this Court in Secretary, Department of Canteen Management Vs. Krishna Kumar Saxena, held that the management in the present case cannot refuse to comply with the requirement of Section 17-B of the Act on the premise that industrial unit in question is lying closed since 29.02.1996 and that it can be

said on that basis that application u/s 17-B is not maintainable. It was held that as per law laid down by Supreme Court in Dena Bank (supra) only conditions that required to be considered for the purpose of Section 17-B are that (i) there must be an award of reinstatement of workman (ii) award must be subjected to challenge either before High Court or Supreme Court and (iii) the workman has filed an affidavit before the Court that he is not in gainfully employment in any establishment during such period. It was held that if troika ingredients are satisfied the workmen can claim the benefits u/s 17-B which is the last wages drawn at the time of their retrenchment. The following observations made by the Court while allowing application u/s 17-B are worth quoting:-

Counsel for writ petitioner (employer) opposed application u/s 17-B of the Act and contends that industrial unit is lying closed since 29.02.1996 and there cannot be any reinstatement of workmen in the establishment and their application u/s 17-B is not maintainable. Counsel urged that while examining application u/s 17-B of the Act the Court has also to consider about merits of the Award and as to whether it is at all executable in facts and circumstances of the case or not. In support of his contention, Counsel placed reliance on the decision of Jharkhand High Court in Employer in relation to the Management of Central Mine Planning and Design Institute Ltd. Vs. Union of India and Others, and of Madras High Court in Godrej and Boyce Manufacturing Co. Ltd., Madras Vs. Principal Labour Court, Madras and Another, In my opinion, in both the cases (supra), Court have made it clear while observing that during pendency of proceedings against Award of Industrial Tribunal, workman has a right to seek remedy u/s 17-B to get last drawn pay and refusing to grant relief u/s 17B is an exception as it would be in rarest of the rare cases.

However, in view of what has been observed by Division Bench of this Court after following the law laid down by Apex Court in Dena Bank v. Kirti Kumar (supra), only conditions required to be considered u/s 17-B are that (1) there must be an Award of reinstatement of workman and (2) against which proceedings are pending either before High Court or Supreme Court; and (3) the workman has filed an affidavit before the Court that he is not employed in any establishment during such period, and if these troika ingredients of Section 17-B are satisfied, the order or direction to the employer to pay full back wages last drawn by the workman inclusive of maintenance allowances admissible under the rules, can be claimed by workmen as of right conferred u/s 17-B of the Act.

As regards submissions made about closure of industrial unit, I find from material on record that Reference was made way back in January, 1990 and petitioners have cross examined workman on 21.09.1996 but still it has not been pointed out that industrial unit is lying closed from 29.02.1996 and even in present writ petition filed on 22.09.1999 questioning validity of the impugned Award dt. 21.11.1989, nothing has been said about closure of industrial unit. It is only for the first time in the course of reply to application u/s 17-B, averred by placing letter of electricity disconnection and few others that industrial unit is

lying closed since 29.02.1996.

In my opinion, this fact which has been referred to cannot be looked into at this stage and once there is an Award of reinstatement of workman passed by Tribunal, against which proceedings in instant petition at the instance of employer are pending before this Court, and workmen have filed affidavit along with application u/s 17-B that they were not employed in any establishment, they are entitled for grant of payment of wages as last drawn by them.

Consequently, application u/s 17B of the Act moved by respondents workmen is allowed and the petitioner is directed to pay to the workmen respondents wages last drawn by them in terms of Section 17-B of the Act till disposal of writ petition. No costs.

4. The respondents-workmen have separately filed contempt petition and he matter has been getting adjourned for the purpose of compliance of order dt. 24.02.2006 passed in application u/s 17-B of the Act. Learned Counsel for the petitioner again sought to agitate the case on the very same arguments raised on 24.02.2006 and again asserted that since the industrial unit in which respondent workmen were engaged was closed down in 1996 which was even prior to passing of award, the petitioner could not be required to comply with the order passed by this Court on 24.02.2006. Learned Counsel submitted that instead of insisting on compliance of that order, main matter itself be heard and decided finally. It was also argued that contempt petition seeking compliance of order dt. 24.02.2006 would not be maintainable. It was also argued that terms of reference themselves were defective and contradictory in terms and contradictions are such, which could not be reconciled. Answer to the reference made by the learned Labour Court was also beyond the terms of the reference. It was also contended that reference being incompetent and void ab initio, award for that purpose would also be taken as void.

5. All that is being argued to avoid compliance of order passed by this Court on 24.02.2006 on application u/s 17-B of the Act was in fact argued, considered and rejected by this Court vide order dt. 24.02.2006, which order has since attained finality. This Court rightly observed in the aforesaid order on the authority of judgment of Supreme Court in Dena Bank (supra), that compliance of order passed u/s 17-B by management, in a writ petition against award directing reinstatement of workman is not optional but statutory obligation of the management, which has to mandatory comply the same and cannot avoid compliance thereof except in a situation envisaged u/s 17-B of the Act itself, which is that if such workmen had been employed and had been receiving adequate remuneration during any such period or part thereof for which the last wages drawn is claimed u/s 17-B of the act. There is no such assertion.

6. The petitioner cannot avoid compliance of the order passed by this Court because it is the petitioner who has come forward to challenge the award and is seeking to avoid its compliance.

7. In the facts of the case and in the face of defiance of the petitioner to comply with order passed by this Court u/s 17-B supra, the interim order passed by this Court on 20.04.2000 cannot be continued and it is hereby vacated.

8. The respondents-workmen would have liberty to enforce implementation of the award dt. 21.11.1998 under the provisions Section 29 or u/s 15 (2) of Payment of Wages Act.