

(2000) 10 BOM CK 0007

In the Bombay High Court

Case No : Notice of Motion No. 210 of 2000 in Writ Petition No. 899 of 1999

Hind Rectifiers Limited

APPELLANT

Vs

Presiding Officer, 1st Labour Court, Bombay and Another

RESPONDENT

Date of Decision : 03-10-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 2

Citation : (2000) 10 BOM CK 0007

Hon'ble Judges : S.K. Shah, J

Bench : Single Bench

Advocate : R.N. Salgaonkar instructed by M/s. Salgaonkar and Co, for the Appellant; N.M. Ganguli, for the Respondent

Judgement

S.K. Shah, J.—Heard the learned counsel for the petitioner as well as the learned counsel for the respondent No. 2 Union.

2. The Writ petition has been filed by the employer challenging the order of reinstatement of the employee passed by the Labour Court.

3. In this writ petition, by order passed by this Court on April 5, 1999, rule is issued and interim relief in terms of prayer clause (b) subject to the provisions of section 17B of the I.D. Act, 1947 is also granted.

4. It is undisputed that the petitioner employer has superannuated the workman on attaining the age of 60 years on 14-4-2000. It is also undisputed that, in view of the provisions of section 17B the employer has paid to the employee the wages as per the provisions of section 17B.

5. By this notice of motion which is taken out by the employee-respondent No. 2, the respondent No. 2 has prayed for the relief that the employer shall continue to pay the wages to the employee as per the provisions of section 17B of the I.D. Act till the pendency of this writ petition.

6. In other words, the prayer is that, although he is superannuated on 14-4-2000

he should be continued to be paid wages till the present writ petition is decided.

7. It is vehemently submitted on behalf of the employee that, what is contemplated under the provisions of section 17B of the I.D. Act is the payment of full wages last drawn by the employee who has been ordered to be reinstated by the Labour Court or the Tribunal or by the National Tribunal by award and where the employer has preferred any proceedings against the said award in the High Court or Supreme Court, so long as such proceeding is pending in the High Court or the Supreme Court irrespective of the fact that the employee having attained the age of superannuation. My attention was also drawn to the reasons and objects behind incorporating the provisions of section 17B and it is further submitted that these provisions are incorporated mainly to avoid the hardship that would cause to the employee when the High Court or Supreme Court directs the operation of the award passed by the Labour Court or the Industrial Court, for that matter, in favour of the employee. In that eventuality, the employee would be without any wages and would suffer lot of hardship during the pendency of the proceedings in higher Courts. He further submits that the words used in section 17B are clear and unambiguous and requires the employer to pay full wages last drawn by the employee during the period of pendency of such proceedings in the High Court or the Supreme Court.

8. As against this, it is submitted on behalf of the employer that the employee has already been paid full wages as required u/s 17B of the Act till he attained the age of superannuation. It is further submitted that the terms and conditions of the employment do not entitle the employee to get any wages beyond the age of superannuation and, therefore, what is payable u/s 17B of the I.D. Act is only the wages which the employee would be entitled to during the pendency of the proceedings in the High Court or Supreme Court.

9. It would be useful to reproduce the provisions of section 17B of the Act, they are as under:-

Section 17B. 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. It is clear from these provisions that, what is payable to the employee are the full wages last drawn by him in the following two conditions:-

(i) Where the Labour Court, Tribunal or National Tribunal by its award; directed the reinstatement of the workman; and

(ii) Where the employer has preferred any proceedings against such award in High Court or the Supreme Court. In these two contingencies; the employer is liable to pay to the employee full wages last drawn.

11. The question is, as to whether the employer is liable to pay such wages to the employee even beyond the age of superannuation? The wording used in the aforesaid provision of section 17B is that, such payment shall be made by the employer "during the period of pendency of such proceedings in the High Court or the Supreme Court". Although the wordings are clear which requires the employer to make payment of wages during the period of pendency of such proceedings, it is difficult to imagine the situation where an employee who has superannuation would also be entitled to receive such wages by resorting to the provisions of section 17B even beyond the period of superannuation. As rightly pointed out by the learned counsel representing the employee, the intention of the statute in incorporating the provisions of section 17B was that the employee should not suffer any hardship where the employer has taken recourse to file proceedings in the High Court or the Supreme Court and obtained the stay of the award of reinstatement passed in his favour. In absence of such provisions, the award of reinstatement that is stayed by the higher Courts could not be implemented and the proceedings in higher Courts which remain pending and during that period employee would be without any wages whereby he would suffer hardship. It is with a view to overcome this situation that the provisions of section 17B are incorporated so as to avoid the hardship that may be caused to the employee as a result of the employer having taken the proceedings to the High Court or the Supreme Court.

12. Even so, what is to be paid to the employee under the provisions of section 17B is only the wages which he is entitled to and also for the period for which he is entitled to. So far as the extent of wages are concerned, they are clarified in the provisions themselves by mentioning that he should be paid full wages last drawn by him at the time of termination of service. It is not disputed at the bar that the services of the respondent employee are governed by the conditions of service. It is also not disputed that the conditions of service prescribe the age of superannuation as 60. If this is so, even in normal course and where there is no litigation the employee could have continued or is entitled to continue in service only upto the age of superannuation. Therefore, the basic right of the employee is to continue in service till the age of superannuation only and not beyond that. Thus, even if under the order passed by the Labour Court, Tribunal or the National Tribunal, for that matter, for reinstatement of the employee and that had given effect to, that would entitle the employee to continue in service only upto the age of superannuation and not beyond that. These things having been

clear, it is impossible to imagine a situation like one in hand where the employee can continue to get the benefit of full wages by taking recourse to section 17B of the Act beyond the age of superannuation. I have no hesitation to note that the provisions of section 17B of the Act are subject to the conditions of employment and they do not cross the limit laid down by the conditions of service. The employee cannot claim anything which he cannot get under the terms of employment and no such order could also be passed in his favour. The provisions of section 17B although speak about the payment of full wages during the pendency of the proceedings in the High Court or the Supreme Court, that right is always subject to the basic right which the employee enjoys under the conditions of service i.e. the age of superannuation.

13. This is further clear from the definition of "wages" given in clause (rr) of section 2 of the I.D. Act. The definition is as under :-

"Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment and includes....

Thus, u/s 17B of the Act employee is entitled to receive his full wages last drawn by him. That means, he is entitled to wages and nothing more. Wages which he is entitled to are as per the terms of employment as has been mentioned in the aforesaid definition of wages. So, the employee is entitled to wages as per the terms of employment and the terms of employment in the present case were that he is entitled to wages till he attains the age of superannuation and not beyond that.

14. I am fortified in my view as above by the decision of the Madras High Court in the case of Varadaraja Textiles (P) Ltd. vs. Labour Court, reported in 1999 I CLR 631. In that case also similar issue was involved and the learned Judge of the Madras High Court has clearly held that the word "wages" is relatable to the employment and once the employment comes to an end on superannuation there cannot be any payment u/s 17B.

15. In this view of the matter, the employee in the instant case before me, can continue to get wages u/s 17B only so long as he continues to be in the employment as a workman, which obviously is upto the date of superannuation and not beyond that. Therefore, the employee's claim for wages u/s 17B of the I.D. Act beyond the age of superannuation is totally misconceived.

16. Consequently, the notice of motion is hereby rejected. C. C. expedited.