

(1985) 09 KL CK 0012
In the High Court Of Kerala

Joshy	Vs	APPELLANT
Valiathovala S. Co-operative Bank		RESPONDENT

Date of Decision : 20-09-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (1986) 1 LLJ 210

Hon'ble Judges : V. Bhaskaran Nambiar, J

Bench : Single Bench

Judgement

Bhaskaran Nambiar, J.—The petitioner was dismissed from service. He was directed to be reinstated by the Labour Court, Ernakulam, on 19th January, 1984. The management has challenged the award by filing this writ petition on 13th August, 1984. This Court granted an interim stay of operation of the award on condition that the management deposits Rs. 1,000/-. This amount was deposited and withdrawn by the petitioner. The stay continues.

2. The petitioner has now filed an application u/s 17B of the Industrial Disputes Act claiming that he should be paid the full wages last drawn by him, during the pendency of this writ petition.

3. The management (petitioner) opposed this claim contending that Section 17-B is not applicable. Section 17-B reads thus:-

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.

Section 17-B came into force on 21st August, 1984. It is therefore contended, that the section cannot apply to awards made prior to coming into force of this section.

4. This provision is intended to give relief to all workmen who have been directed to be reinstated by the Labour Court and against whom proceedings are taken in the High Court by challenging the award. Under this provision there is a statutory conferment of certain benefits of payment of wages during the pendency of the proceedings in the High Court. The right accrues only when a proceeding is initiated in the High Court and continues as long as the proceedings are pending. The right therefore does not depend on the date of the award, but on the pendency of the proceedings. Thus Section 17-B can be invoked whether the award has been made before or after 21st August, 1984 and the benefit has to be given in respect of any period after that date during which a proceeding is pending in the High Court. This section can be invoked even in respect of proceedings filed in the High Court before the commencement of the Section 17-B, but only for the period during which it was pending after 21st August, 1984.

5. If the contention of the management is accepted the position will be that there may not be any liability to pay the dues u/s 17-B if once the award is set aside by the High Court later. This provision gives statutory relief to certain classes of workmen for a limited period and it is not lost simply because ultimately the High Court sets aside the award. The subsequent disposal of the OP. in favour of the management does not affect the earlier right already accrued u/s 17-B to receive some amounts as specified therein.

6. The petitioner states that the wages last drawn by him come to Rs. 394/-. The writ petition was filed on 13th August, 1984. The 1st respondent will therefore pay to the petitioner herein wages calculated at that rate with effect from 13th August, 1984 till the disposal of the OP. Amount so far due less the amount of Rs. 1,000/- paid already will be paid within one month from today.

Post the Original Petition for hearing after six weeks.

Hand over the order.