

(2007) 07 GUJ CK 0005

In the Gujarat High Court

Case No : Civil Application For Orders No. 6163 of 2007

Lalshankar Ramjibhai Shrimali

APPELLANT

Vs

Unjha Nagar Palika

RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2007) 114 FLR 1134

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : R.V. Desai, for the Appellant; Dipak R. Dave, for the Respondent

Judgement

H.K. Rathod, J.—Learned Advocate Mr. R.V. Desai appearing on behalf of applicant-original respondent and learned Advocate Mr. Dipak R. Dave appearing on behalf of present opponent-original petitioner.

Learned Advocate Mr. Dave made a mention that learned Advocate life Desai is not well/therefore; he left the Court. Even though, this Court has taken up this application for hearing because presence of learned Advocate Mr. Desai is not much relevant as averments made in the application are sufficient to consider thin application by this Court while examining the matter for Section 17-B of the Industrial Disputes Act, 1947. The important is the answer which is given by the respondent who is present before this Court and I have heard learned Advocate Mr. Dave appearing on behalf of present opponent - original petitioner.

2. In main Special Civil Application No. 16640 of 2004, the petitioner has challenged the award passed by the Labour Court, Kalol, District Mehsana in Perence (L.C.M.) No. 69 of 1992 dated 15th September 2004. The Labour Court has set aside the termination order and granted the reinstatement with continuity of service with consequential benefits and with full back wages of interim period with the cost of Rs. 10,000/-. The affidavit-in-reply is filed by the respondent in main petition.

3. This matter was moved by. the present opponent-original petitioner on 21st December, 2004 and notified on 24th December, 2004. The detailed order passed by this Court on 19th January, 2005 after hearing learned Advocate Mr. Dave appearing on behalf of present opponent-original petitioner. Ultimately, this Court has passed the following order:

7. Rule returnable on 9.2.2004. Mr. Desai waives service of rule. Notice as to interim relief returnable on the same day. Interim relief in terms of para 6(B). At this juncture, Mr. Desai, learned Advocate appearing for the respondent-workman requests that stay may be made subject to compliance of Section 17-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Considering the facts of this case and in view of the fact that "rule" is made returnable on 9.2.2005 it is not deemed fit to order compliance of the provisions of Section 17-B of the Act.

4. This Court has granted interim relief in terms of Para 6(B). The request was made by the learned Advocate for the respondent that stay may be made subject to compliance of Section 17-B of the Industrial Disputes Act, 1947, but, this Court has issued "rule" and made it returnable on 9th February, 2005. Therefore, it was not deemed fit to order for compliance of the provisions of Section 17-B of the Industrial Disputes Act, 1947. Thereafter, on 9th February, 2005, Learned advocate Mr. Desai appearing on behalf of the present applicant-original respondent requests for some time and matter was adjourned to 17th February, 2005. Thereafter, it was directed by this Court on 6th May, 2005 to enlist the matter for final hearing on 29th June, 2005. Thereafter, matter remained as it is and periodically adjourned to each occasions without final hearing. Lastly, it was adjourned to 16th March, 2006. As referred above, except that; there is no other orders have been passed by this Court in main matter.

5. The present Civil Application is filed by the respondent-workman, where, the averments have been made that from the date of award i.e. 15th September, 2004 to till the date of affidavit in application, the respondent workman is without job, therefore, he is entitled for the benefit of Section 17-B of the Industrial Disputes Act, 1947. Accordingly, prayer is made to grant the benefit of Section 17-B of the Industrial Disputes Act, 1947.

6. Today, the reply is filed by the present opponent-original petitioner, wherein, learned Advocate Mr. Dave relied upon Para 3.1 to 3.3 which are quoted as under:

3.1 At the outset it is submitted that the present application is required to be dismissed only on the ground that the applicant has suppressed material fact from the knowledge of this Hon"ble Court. The applicant has not disclosed that on 19.1.2005, this Hon"ble Court was pleased to pass detail order by which Rule was issued and the request on behalf of the applicant to grant Section 17-B was declined and the Rule was made returnable on 9.2.2005. It is submitted that the said order has been accepted by the applicant and has not challenged. Therefore, now again the applicant cannot seek compliance of Section 17-B of I.D. Act.

3.2 It is further humbly and respectfully submitted that the applicant has after a lapse of three years, filed this application and is seeking compliance of Section 17-B from the date of award. It is submitted that the applicant is doing miscellaneous plumbing and pipe fitting work in Unjha town as per the information made available to the present deponent and, therefore, also, the applicant is not entitled to the wages u/s 17-B of the Industrial Disputes Act, 1947.

3.3 It is further humbly and respectfully submitted that the applicant was called for doing temporary work in Water Works Department. In fact the applicant had worked only for few days and, thereafter, he never turned up for doing work from July 1991. The Nagarpalika is ready and willing to assign work to the applicant as and when available. However, the applicant has never approached Nagarpalika seeking for work. At present also, the applicant can approach Nagarpalika and as and when work is available, the applicant will be provided with the work as a daily wager in Water Works Department and, therefore, this application may kindly not be entertained in the interest of justice. It is submitted that the applicant wants idle wages. The Nagarpalika may not be subjected to pay idle wages to an employee who has not cared to file an application for all these years and even has not bothered to approach Nagarpalika so as to get daily wage work for all these years. In fact, the applicant is doing miscellaneous work of Plumbing and Pipe fitting in Unjha town and, therefore, this application may kindly be rejected.

7. The first contention raised by learned Advocate Mr. Dave before this Court is that this Court has issued "rule" and made it returnable on 9th February, 2005 and interim relief was granted without compliance of the provisions at Section 17-B of the Industrial Disputes Act, 1947.

The respondent-workman is doing miscellaneous work e.g., plumbing and pipe fitting work in Unjha Town as per the information available to the present deponent. Therefore, he is not entitled the benefit of Section 17-B wages and Nagarpalika is ready and willing to assign the work to the present applicant workman as and when available as respondent has never approached the Nagarpalika seeking for work., Even, at present, the applicant can approach Nagarpalika, and as and when work is available, the applicant will provide the work as daily wager in Water Works Department, and therefore, not to entertain this application and Nagarpalika may not be subjected to pay idle wages to an employee who has not cared to file an application for all these years. Except referred above, no other contentions raised by learned advocate Mr. Dave before this Court.

I am aware about the facts that I am considering the application of the present applicant-workman in absence of his lawyer. The Labour Court has set aside the termination order dated 3rd July, 1991. The dispute was raised in the year 1992 i.e. on 17 February, 1992. The Labour Court has taken a period of 12 years deciding this Reference. Thereafter, Labour Court has come to the conclusion that

termination order is bad, therefore, reinstatement with back wages and consequence benefit directed to the original petitioner-present opponent. Before the Labour Court, present opponent-original petitioner has not made any statement that petitioner is ready and willing to offer the work to the respondent workman-present applicant as and when work is available, On the contrary, stand of the petitioner-present opponent was that there was no question of any termination and whatever order has been passed, that may be considered to be legal and valid, and also, number of technical contentions were raised. It is also necessary to note the conduct of the petitioner-present opponent by way of written statement filed before the Labour Court. The petitioner remained totally silent in Reference. The Public Body who is receiving the grant from State Government is answerable to the public. It is necessary to note that no evidence has been produced either oral or documentary before the Labour Court though reference was remained pending for a period of 12 years. Who is answerable for that lapse committed by the original petitioner-present opponent being a Public Body? Now, petitioner became smart to point out all the legal contentions, as if, earlier, they were remained vigilant. Such type of practice and conduct of Public Body should have to be deprecated. The Labour Court was helpless because nothing was produced on record except the reply by the original petitioner before the Labour Court. Therefore, ultimately, in absence of documents and oral evidence, the defence which was taken by the petitioner before the Labour Court was not proved. Therefore, Labour Court has considered the matter and evidence of the workman and documents produced by the workman which were believed by the Labour Court and order has been passed accordingly. It is also necessary to note one important aspect that in the year 2001, this Reference was decided in absence of original petitioner being an ex-parte award, which was allowed to be set aside by filing subsequent application by the original petitioner and ultimately, reference was decided after hearing both the parties. The evidence of the workman was remained unchallenged. No any rebuttal evidence is produced by the original petitioner before the Labour Court, and ultimately, Labour Court has granted reinstatement with full back wages of interim period. In that award, where, present opponent-original petitioner remained totally silent and not disputed and challenged evidence of the workman and not disputed the unemployment of the workman. No one has examined by the petitioner even the Chief Officer, and now, raising all the contentions before this Court, which is nothing but smartness of the petitioner.

In light of the aforesaid background, I am examining this application. This Court has not granted interim relief subject to compliance of Section 17-B on the ground that "rule" is made returnable on 9th February, 2004. So, on number of occasions, this Court is not passing the order with condition or granting interim relief because "rule" is made returnable within short time. But that doesn't mean that, if, "rule" is not heard by this Court within a period of one month or within specified date, such order should have to remain as it is in a changed circumstances. To make submissions by the lawyer pointing out that application

of Section 17-B has not been ordered by this Court, as if that, it is necessary for this Court to pass such order of compliance. There is no need to pass such compliance order by this Court. It is a statutory compulsion on the part of the petitioner when a moment, stay has been obtained against the reinstatement, the petitioner shall have to implement the provisions of Section 17-B of the Industrial Disputes Act, 1947. The question of direction from this Court to compliance is irrelevant. This being a mandatory provision. This Court has no power to deny the benefit of Section 17-B except the circumstances mentioned in proviso of Section 17-B of the Industrial Disputes Act, 1947. Therefore, the contention raised by learned Advocate Mr. Dave before this Court that this Court has not directed to comply of Section 17-B is totally irrelevant submission knowing fully well the mandate of Section 17-B of the Industrial Disputes Act, 1947. Even, this Court cannot deny the legitimate right of the workman which has been granted by the statutory provisions, otherwise, provisions become meaningless. Therefore, that contention is rejected by this Court. [See : 2007 Lab. I.C. 1682 Chhattisgarh, 2007 Lab. I.C. 1514., 2007 (II) GLR1142 ., Secretary General, Family Planning Association and Others Vs. Sunil Kumar Shrivastava and Another, and Rajasthan State Granite and Mars. Mazdoor Sangh Vs. Rajasthan Mines and Minerals Ltd. and Others,

8. The second contention raised by learned Advocate Mr. Dave before this Court is that workman is doing some miscellaneous work i.e. plumbing and pipe fitting work in Unjha town as per information of the present deponent.

Merely having the information that respondent is doing some miscellaneous work is not enough to deny the benefit of Section 17-B of the Industrial Disputes Act, 1947, but, petitioner shall have to produce some evidence to satisfy this Court that workman is gainfully employed. This Court is not satisfied by merely an averments of the original petitioner, apart from that, some miscellaneous work cannot consider to be a gainful employment, because, section provides that if the respondent-workman is employed in any establishment and receiving adequate remuneration and that fact is proved by the original petitioner, then, this Court can deny the benefit of Section 17-B of the Industrial Disputes Act, 1947. So, this Court has examined this question of gainful employment in case of University Granth Nirman Board. That decision is reported in (2003) I GLH 626 which was confirmed by the two Division Bench of this Court in Bhanulal Khimjibhai Solanki Vs. Deputy Executive Engineer, and Cyanides and Chemicals Company Vs. Mansingh Mangalram Varma, Therefore, the second contention about gainful employment is also rejected by this Court.

9. The third contention being a novel contention raised by the origins petitioner before this Court is that Nagarpalika is ready and willing to assign the work as and when work is available. The said offer is not of reinstatement but offer the work to the workman on instalment basis contrary to the direction given in the award by Labour Court.

By raising the third contention before this Court by the learned Advocate, a\$ if

that, they are showing mercy towards the workman and forgetting the legal rights i.e. the award passed by the Labour Court and also provisions of Section 17-B of the Industrial Disputes Act, 1947. Therefore, this is being a dissatisfactory reply from the original petitioner that as and when work is available, the petitioner will be taken back in service. Therefore, the stand taken by the petitioner is totally unreasonable.

The contention of learned Advocate Mr. Dave is that any workman files such application after a period of three years. The reasons are obvious. Initially, this Court has not directed to petitioner to comply provisions of Section 17-B. Therefore, naturally, workman has to wait for final hearing of petition. But ultimately, matter is not decided. Therefore, workman has filed application claiming wages u/s 17-B. There is no time limit prescribed u/s 17-B that within how much time, such application is to be filed. Therefore, it is an obligation of employer to comply statutory mandate. After the award, no offer was made by original petitioner to the workman to report for duty. On the contrary, stay is obtained against award. Now, to raise contention of delay in filing application cannot be accepted and same is rejected being unreasonable. The workman is entitled the said benefit of Section 17-B from the date of award according to the object of Section 17-B of the Industrial Disputes Act, 1947. (See 2006 Lab. I.C. 3425 Guj.)

I may say that this is an arbitrariness with an ulterior motive to deny the legitimate right of the workman u/s 17-B of the Industrial Disputes Act, 1947. This being a Public Body Unjha Nagarpalika and the Director of Municipality is having the control over the Nagarpalika and upon the Director of Municipality, the State Government is having the control over it.

10. Therefore, while rejecting the each contentions raised by learned Advocate Mr. Dave, it is boiler that Director of Municipality and Secretary, Urban Rural and Urban Housing Development Department, Gandhinagar shall have to look into matter as to what lapses have been committed by the present opponent - original petitioner i.e. Unjha Nagarpalika when the Reference was pending before the Labour Court for a period of 12 years, except reply as referred, no one remained to proceed with the Reference. No relevant evidence was produced or led before the Labour Court and no documentary evidence was produced. Ultimately, Labour Court has believed the evidence of workman and pass the award granting full relief in favour of original respondent - workman and can we not understand that the amount of Public exchequer is normally argued by the lawyer of employer of Public Body has been unnecessarily spent by the local body, meaning thereby that by not taking proper care at the time when the Reference was pending before the Labour Court for a period of 12 years.

11. Therefore, it is directed to the present opponent - original petitioner to pay last drawn monthly wages to the present applicant - original respondent - workman with effect from 15th September, 2004 till 30th June, 2007 within a period of two months from the date of receiving the copy of the said order and it

is further directed to the petitioner-Unjha Nagarpalika to pay regularly last-drawn monthly wages inclusive monthly allowance available to the workman as per service rules till the matter is finally decided by this Court.

12. In view of above observation and direction, present Civil Application is disposed of.

The registry are directed to send the copy of this order to the Director of Municipality, Gandhinagar and Secretary, Urban Rural and Urban Housing Development Department, Gandhinagar immediately without any delay.