

(2008) 05 JH CK 0026
In the Jharkhand High Court

Madhu Sudan Prasad Singh	Vs	APPELLANT
Tata Steel Limited		RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2008) 4 JCR 294

Hon'ble Judges : M.Y. Eqbal, J; Dilip kumar sinha, J

Bench : Division Bench

Judgement

1. This appeal is directed against the judgment and order dated 7.3.2008 passed in WP (L) No. 4637 of 2006 wherein learned Single Judge refused to modify the order dated 27.4.2007 u/s 17-B of the Industrial Disputes Act.

2. The impugned order reads as under:

Mr. P.P.N. Rai submitted that this application has been filed for modification of the order dated 27.4.2007 directing the petitioner to pay wages u/s 17-B of the Industrial Disputes Act, from the date of the Award. He further submitted that the current wages are also not paid. He relied on interim order dated 28.6.2007 passed in WP (L) No. 208 of 2006 and submitted that in that case wage was allowed from the date of pronouncement of the Award.

Mr. Rajiv Ranjan on the other hand submitted that the said order dated 27.4.2007 was passed after hearing the parties and therefore it should not be modified on the basis of order passed in other case thereafter. He further submitted that after reaching the age of superannuation in June, 2007, petitioner is not entitled to claim wages u/s 17-B of the I.D. Act. He relied on the order dated 8.4.2004 passed in CMP No. 392 of 2003 and order dated 27.2.2007 passed in WP (L) No. 871 of 2002. He further submitted that the wages from 18.8.2006 up to June, 2007 has been paid.

The order dated 27.4.2007 was passed after hearing the parties. I am not inclined to modify it on the said ground. Moreover, petitioner cannot claim the

wages u/s 17-B after he reached the age of superannuation.

Accordingly, I.A. No. 2976 of 2007 is rejected.

3. It appears that the appellant who is a workman raised industrial dispute for adjudication as to whether his dismissal from service was legal and justified. The Labour Court in terms of award dated 24.1.2006 answered the reference in favour of the appellant-workman and held that the dismissal was not justified. The Labour Court further directed for reinstatement of the appellant with full back wages and with continued service. The said award was challenged by the respondents by filing writ petition being WP (L) No. 4637 of 2006. In that writ petition, application u/s 17-B of the Act was filed by the employer for stay of the award. Learned Single Judge in terms of order dated 27.4.2007 directed the stay of the operation of the award on the condition of payment of wages from the date of filing of the writ petition. Appellant filed an application for modification of the same interim order to the extent that wages should be paid from the date of the award and not from the date of filing of the writ petition.

4. Admittedly, the award was passed by the Labour Court on 24.1.2006 and the writ petition was filed by the respondent-employer after six months. Appellant was neither reinstated nor was paid wages last drawn by him.

5. The question, therefore, that falls for consideration is as to whether in the event of award of the Labour Court for reinstatement and for payment of full back wages is stayed by the High Court on the application filed by the employer u/s 17-B of the Industrial Disputes Act, then from which date direction could be issued for payment of last wages drawn by the workman.

6. Aforesaid question has been set at rest by the Hon"ble Supreme Court in the decision of Regional Authority, Dena Bank and Anr. v. Ghanshyam 2001 II LLJ 274. In paragraph 8 of the judgment Their Lordships observed:

8. The statement of objects and reasons for inserting the said provision indicates that when Labour Courts pass awards of reinstatement, they are often contested by employers in the Supreme Court and High Courts. To mitigate the hardship that would be caused due to delay in implementation of the award, it was proposed to provide for payment of wages last drawn by the workman concerned from the date of the award till the dispute between the parties is finally decided in the High Courts or the Supreme Court. It follows that in the event of an employer not reinstating the workman and not seeking any interim relief in respect of the award directing reinstatement of the workman or in a case where the Court is not inclined to stay such award in toto the workman has two options either to initiate proceeding to enforce the award or be content with receiving the full wages last drawn by him without prejudice to the result of the proceedings preferred by the employer against the award till he is reinstated or proceedings are terminated in his favour, whichever is earlier. In Dena Bank's case (supra), this Court elucidated the express "full wages last drawn" as follows:

The Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and therefore used the words "full wages last drawn?".

7. The Supreme Court finally in paragraph 11 of the judgment held as under:

11. We have mentioned above that the import of Section 17-B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the statement of the objects and reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17-B was inserted in the Act. We have also pointed out above that Section 17-B does not preclude the High Courts or this Court from granting better benefits-more just and equitable on the facts of a case than contemplated by that provision to a workman. By interim order the High Court did not grant relief in terms of Section 17-B, nay, there is no reference to that section in the orders of the High Court, therefore, in this case the question of payment of "full wages last drawn" to the respondent does not arise. In the light of the above discussion the power of the High Court to pass the impugned order cannot but be upheld so the respondent is entitled to his salary in terms of the said order.

8. Finding the aforesaid ratio decided by the Supreme Court, we are of the view that when the award for reinstatement has been stayed by the learned Single Judge then at least wages last drawn should be directed to be paid from the date of the award.

9. We, therefore, modify the impugned order to that extent only.

10. Let it be clarified that no wages shall be paid after the appellant attained the age of superannuation.