

(2006) 06 GUJ CK 0023

In the Gujarat High Court

Case No : Civil Application - For Direction No. 6849 of 2006 in Special Civil Application No. 1610 of 2001

Mafatlal S. Patel

APPELLANT

Vs

Blindmen's Association

RESPONDENT

Date of Decision : 30-06-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2006) 26 GLH 624

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

Bench : Single Bench

Advocate : Mahendra K Patel, for the Appellant; PS Chari, for the Respondent

Judgement

H.K. Rathod, J.—Heard the learned Advocate, Mr. M.K.Patel, appearing on behalf of applicant original respondent and learned Advocate, Mr. Chari, appearing on behalf of respondent original petitioner.

2. The respondent original petitioner Blindmen's Association has challenged the award dated 19.5.2000 passed by Labour Court, Ahmedabad in Reference No. 728 of 1988 by filing SCA No. 1610 of 2001. The Labour Court, Ahmedabad has come to conclusion that by threat, resignation was obtained from the workman and, therefore, workman is entitled the reinstatement with continuity of service with full back wages of interim period. The Labour Court, Ahmedabad has directed the original petitioner to implement and enforce the award u/s 17A of the I.D. Act, 1947 within a period of 30 days from the date of publication. This award can be enforced considering the provisions of Section 17A of the I.D. Act, 1947 after completion of 30 days from the date of publication. The SCA No. 1610 of 2001 is filed by original petitioner on 20.2.2001 and this Court has passed the order issuing Rule and granted ad-interim relief in terms of Para.4(B), whereby, the entire award including reinstatement with back wages has been stayed by this Court. This ex-parte ad-interim relief is continued as it is.

3. The applicant original respondent has filed present Civil Application on

29.5.2006. In Para.4 and 5, the applicant has made following averments:

4. The applicant respectfully submits that as per the provisions of Section 17B of Industrial Disputes Act, 1947, if the employer approaches this Hon''ble Court against the award of Labour Court and the Hon''ble Court stays the reinstatement awarded by the Labour Court and if the employee/workman is not gainfully employed elsewhere then, in that case, the concerned employee is entitled to get last drawn wages which the employee was getting at the time of termination. In the present case, this Hon''ble Court has stayed the impugned award of the Labour Court, subject to compliance with the provisions of Section 17B of the ID Act. The applicant therefore prays this Hon''ble Court to grant the benefits of Section 17B of Industrial Disputes Act to the applicant in the interest of justice.

5. It is respectfully submitted that the applicant is a handicapped person. The applicant has disability to the extent of 60% on the right hand. The applicant is facing great financial hardships and is unable to maintain his family. Despite the award of the Labour Court, Ahmedabad, the applicant has not been reinstated in service till today, nor he has been paid the wages as directed by the Labour Court. The applicant has not been able to get job elsewhere despite serious efforts. Therefore in view of all these facts and circumstances, the applicant prays this Hon''ble Court to allow this petition and grant last drawn wages as per Section 17B of I.D. Act in favour of the applicant in the interest of justice.

4. It is important to note that what kind of contention has the petitioner raised before this Court knowing fully well that notice of rule is not received by respondent workman. The Rule which has been issued by this Court on 5.3.2001 is still remained unserved to the respondent workman. The endorsement made by civil department that notice to respondent is unserved as not found, then, it is a duty of the Advocate who is appearing on behalf of petitioner to take necessary steps as required under CPC to serve the respondent workman. Looking to the original record, it appears that the Advocate has not taken any steps or made any efforts to serve the respondent. Meaning thereby that order passed by this Court in the year 2001 remained unserved for more than 5 years to the respondent workman. Therefore, in light of this original record, it is necessary to reproduce Para.3, 4, 5 and 5 of the reply as under:

3. With reference to para -2, I respectfully submit that the Special Civil Application No. 1610 of 2001 was filed by the Opponent and the orders passed by the Hon''ble High Court are on record and my Advocate would refer to the same at the time of hearing for proper interpretation of the orders passed by the Hon''ble High Court. It is not correct to say that the applicant has no knowledge of the orders passed by the Hon''ble High Court in the aforesaid Special Civil Application No. 1610 of 2001. It is denied that no efforts were made to serve the Rule/Notice issued in the aforesaid matter. It is denied that the applicant has no knowledge about the pendency of the matter. I respectfully state that the opponent (Blind Men's Association) has no knowledge with regard to the orders

passed in the Recovery Application referred to in the said para.

4. With reference to Para.3, it is difficult to believe that the applicant was not gainfully employed. In view of the fact that the Civil Application is filed after a period of about six years, which shows that there is gross delay in filing the Civil Application for getting the benefits of Section 17B of the Industrial Disputes Act. It is therefore submitted that the applicant has not come with clean hands. It is therefore submitted that the Civil Application deserves to be rejected.

5. With reference to Para.4, it is submitted that the applicant has wrongly interpreted Section 17B of the Industrial Disputes Act. The averments made in Para.4 are unwarranted, misconceived and hence denied.

6. With reference to Para.5, it is denied that there is disability as claimed, i.e. 60%. It is submitted that the Hon'ble High Court has stayed the Labour Court's orders and the applicant has knowledge of the same which is apparent from his conduct. It is submitted that the Hon'ble Court may reject the said Civil Application in view of the fact that the Civil Application itself is not maintainable.

5. Learned Advocate, Mr. Patel, submitted that the Recovery Application filed by the respondent workman being No. 1014 of 2002 wherein Labour Court has passed an order on 20.1.2006 and granted the benefit in terms of money of back wages and other benefits as per the award passed by Labour Court, Ahmedabad in Reference No. 728 of 1988. The Labour Court has granted back wages for the period 1.12.1987 to 30.6.2002. In this recovery proceedings, original petitioner was remained present and appeared before the Labour Court and filed written statement vide Exh.8. In Para.2 of the order passed by Labour Court in recovery, as referred above, the contention raised by original petitioner that award is challenged by the petitioner before the Hon'ble High Court, but no details have been given by the original petitioner to the Labour Court and no copy of the order placed on record before the Labour Court by the original petitioner knowing fully well that original petitioner has obtained ex-parte ad-interim relief from this Court and copy of which has not been served to the respondent workman. Therefore, though the original petitioner having the correct facts, suppressed the material fact from the Labour Court as well as from this Court when Advocate appearing on behalf of petitioner, not disclosed the correct facts before the Labour Court as well as to this Court while filing reply in Civil Application. Not only that, no correct facts have been disclosed to the respondent workman also that petitioner has obtained the stay from this Hon'ble Court. Therefore, ultimately, Labour Court has passed an order in Recovery Application and granted wages upto 30.6.2002.

6. Learned Advocate, Mr. M.K. Patel, is making statement before this Court that till date, notice of rule with interim order dated 5.3.2001 is not received by respondent workman. In light of this statement, Registry is directed to verify from the original record of SCA No. 1610 of 2001, whether notice of rule with interim order dated 5.3.2001 is served to the respondent or not. If not served,

then, what steps have been taken by the Office. However, if the sufficient steps, according to Rules, have been taken by the Office and if petitioner's Advocate is not complying with the same, what would be the result of it. These details are required to be placed on record by the Registry before this Court on or before 11.7.2006 in SCA No. 1610 of 2001.

7. However, in light of this background, the contentions raised in the reply by the original petitioner cannot be accepted that the application is filed by the respondent workman at a belated stage. In light of these facts, when respondent workman has not received notice of rule and ad-interim order till date from this Court, then, there is no delay on the part of respondent workman in filing present Civil Application u/s 17B of the I.D.Act. The 17B Application is required to be filed by the workman a moment he received the notice and stay order from this Court against the implementation of award. But, till date workman has not received any notice of rule and stay from this Court. Therefore, present application is well within time and, therefore, it is maintainable. The averments made by the workman in Para.4 and 5 that he remained unemployed during the interim period from date of award and not gainfully employed. There is no positive evidence produced by employer in reply that workman is gainfully employed in any establishment. Therefore, in absence of such evidence from employer, the workman is entitled the benefit u/s 17B of the I.D. Act, 1947. The relief of Section 17B can be granted by the Court not from the date of petition, not from the date of order passed by this Court, not from the date of application filed by the workman, but it should have to be granted from the date of award. This aspect has been examined by a Division Bench of Delhi High Court in case of Indra Perfumery Co. Thr. Sudershab Oberoi v. Presiding Officer and Ors, reported in 2004 2 CLR 760. Para.2, 8, 9, 10 and 13 of the said decision are quoted as under:

2. The issue involved is as to from which date workman would be entitled to receive wages u/s 17-B of the Industrial Disputes Act (hereinafter referred s the Act) namely, whether from the date of award or from the date, writ petition is filed in this Court. Section 17-B of the Act reads as under:

"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.

8. No doubt, the language of Section 17-B of the Act particularly, the words "during the period of pendency of proceedings in the High Court" gives an impression that order regarding payment has to be made for the period when proceedings were pending in this Court. However, in the case of Regional Authority, Dena Bank and Anr. v. Ghanshyam, reported in JT 2001 (1) SC 229, wherein the Apex Court had examined this question in paras 7, 8 and 9. Considering the statement and objects and reasons for inserting the said provision and to mitigate the hardship that would be caused to delay in implementation of the award, the Apex Court pointed out that it was proposed to provide the payment of wages last drawn by the workman concerned from the date of the award till the disputes between the parties finally decided either in the High Court or the Supreme Court. It may be noted that after the award is made by the competent Forum, it becomes the bounden duty of the employer, either to take back the workman in service as per the directions made by the Court or to pay the wages. It is keeping this aspect in mind, Section 17B, came to be inserted. After the award is made, this Court is of the opinion that unless the stay is granted by the Court, it is the duty of the employer to implement the award and the moment he challenges, it becomes his bounden duty to follow the mandate of Section 17B, when there is an affidavit filed by the workman that he was not gainfully employed, as indicated in Section 17B of the Act.

9. We may observe that the Apex Court in the case of Dena Bank (Supra), was not directly examining the issue namely whether the order u/s 17B can be made from the date of the award or from the date of the filing of the writ petition. However, we note from paras 7, 8 and 9 of the judgment that the Court has indicated that such payment is to be made from the date of the award.

10. The Court is examining the legislation, which is a welfare legislation. The Labour Court on arriving at a conclusion that dismissal/termination is illegal, has to direct reinstatement of the workman with full back wages. In the instant case, in view of the order the workman was entitled to not only the back wages, but was also entitled to get current wages, unless he had refused to work. If the employer, instead of reinstating the workman, challenges the award and obtains stay order, the workman will not get the benefit of the order which ought to flow from the date of the order. It is in view of this, when an order is made by the Labour Court, the benefit must flow from the date of the order passed. Section 17B of the Act protects both the sides during the pendency of the proceedings in the High Court and if the proceedings are not pending, then the workman cannot be denied the benefit of the order made by the Labour Court. It is in view of this, it would be just and proper to say that the workman is entitled to get the benefit of the order from the date of the passing of the order.

13. From the reading of Section 17B, it becomes clear that the employer shall be liable to pay such workman during the period of pendency of the proceedings in

the High Court, full wages last drawn by him, inclusive of any maintenance allowances, etc. as indicated in Section 17B of the Act. No doubt, an affidavit by such workman is required to be filed that the workman had not been employed in any establishment during the period. In the instant case, affidavits have been filed by both the workmen.

8. In view of the observations made by the Division Bench of Delhi High Court that benefit of Section 17B will be available to the workman from date of award and not from any other date. This legal position has been made clear by Division Bench of Delhi High Court. However, considering the fact that Labour Court in Recovery Application granted the wages upto 30.6.2002 in favour of respondent workman, therefore, according to my opinion, respondent workman is entitled the benefit of Section 17B of the I.D. Act, 1947 w.e.f. 1.7.2002 onwards till the main SCA is finally decided by this Court. Accordingly, it is directed to original petitioner to pay last drawn wages inclusive of any maintenance allowance available to the workman under the Service Rules w.e.f. 1.7.2002 to 30.6.2006 within a period of one month from the date of receiving the copy of this order. It is further directed to the original petitioner to pay regularly last drawn wages u/s 17B of the I.D. Act, 1947 to the respondent workman till the main SCA is finally decided by this Court. Registry to verify, whether the writ of this Court has been served to the respondent or not and why the effective steps have not been taken by the department when notice of rule is not served to the respondent. The responsible officer should have to explain in writing to that effect and explain the lapse, if any, on the part of the Department.

9. In view of the above observations and directions, present Civil Application stands disposed of.

10. Office to notify the SCA No. 1610 of 2001 for hearing of ad-interim relief on 11.7.2006 on admission Board.