
(2011) 02 GUJ CK 0125
In the Gujarat High Court

Case No : Civil Application No. 1235 of 2011 in Special Civil Application No. 14406 of 2010

Mahesh Kanjibhai Rohit

APPELLANT

Vs

Rhine Engineering Private Limited and Others

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2011) 02 GUJ CK 0125

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : K.R. Koshti and Mrpgmavlankar, for the Appellant; Kabir A. Hathi, for Respondents 1 and 2, J.B. Pardiwala, for Respondent 3 and P.F. Adhvaryu, for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

S.R. Brahmbhatt, J.—Rule. Mr. Hathi, learned advocate waives service of Rule on behalf of Respondent Nos. 1 and 2, Mr. Adhvaryu, learned advocate also waives service of Rule for Respondent No. 4. The Respondent No. 3 being Presiding Officer, is not required to be served. By consent, Rule is fixed forthwith with the consent of learned advocates for the parties.

2. The applicant has taken out this application for seeking appropriate direction to the opponent No. 1 -Petitioner for paying regular wages from the date of award to 29.10.2010 i.e. the date on which the stay order was granted against the implementation and operation of the award and last drawn wages in accordance with provisions of Section 17B of the Industrial Disputes Act, 1947(hereinafter referred to as "the I.D. Act" for short), as the employer has challenged the order of reinstatement in main matter being Special Civil Application No. 14406 of 2010.

3. The affidavit-in-reply is filed by the opponent no. 1 in this application, who happens to be the Petitioner, who has challenged the award dated 16.7.2010,

wherein, the direction of reinstatement is made. Learned advocate Sheri Hathi appearing for opponent No. 1 contended that the applicant is not entitled to receive Section 17B wages or any other wages from the present opponent No. 1 original Petitioner as the employee workman had never been employed or engaged by opponent No. 1 in this application. The opponent No. 1 has purchased only the plant and machinery and not the business from opponent no. 4 and therefore, as could be seen from the cause title of the award, the opponent No. 4 is party one and present opponent No. 1 i.e. Rhine engineering Private Ltd. is party No. 2. Therefore, the liability to pay 17B wages should be fastioned to opponent No. 4, if at all it inadmissible under the peculiar facts and circumstances of the case.

4. This Court is unable to accept the submission offshore Hathi for opponent No. 1. The Petitioner in main matter being Special Civil Application No. 14406 of 2010 i.e. Rhine Engineering Pvt. Ltd. might have been right in its contention that it has not stepped into the shoes of opponent No. 4 as only the machinery and plants have been purchased and therefore, it could not have been fastioned with the liability of the workman concerned but the fact remains to be noted that the order and award impugned in the main matter being award dated 16.7.2010 contained specific direction against the Petitioner. The operative part of the award deserves to be stated as under: In the operative part in order dated 16.7.2010, it is specifically mentioned that the first party establishment No. 2, who happened to be Rhine Engineering Pvt. Ltd is directed to reinstate the workman. Now, it is very clear that the order and award dated 16.7.2010 is containing the direction of reinstatement of the workman to the Petitioner and being aggrieved by such direction, may be based upon arguable submission, is challenged by Rhine Engineering Pvt. Ltd Petitioner only. Therefore, provisions of Section 17B of the I.D. Act would have to be complied with by the Petitioner as the applicant -workman is deprived of the benefits of the award at the instance of Petitioner, who has chosen to approach this Court challenging the direction of reinstatement. The prayer for wages Section 17B of the I.D. Act is therefore, required to be granted. The application is allowed and the Petitioner i.e. opponent No. 1 hereinabove is directed to pay the last drawn wages to the applicant from the date of petition and the workman will be at liberty to taken out appropriate proceedings for recovering the wages for last drawn wages from the date of publication of the award till it was stayed and stay order shall not therefore come in his way and this wages at this stage is not required to be granted in my view. In this peculiar facts and circumstances of the case, I am allowing this application only and ordered the opponent No. 1 to make payment of last drawn wages to the workman till pendency and final disposal of the petition being Special Civil Application No. 14406 of 2010.

5. With this observation, Civil Application is allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.