
(1998) 01 CAL CK 0023
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction, C.O. No. 15829" (W) of 1994

M/s. Continental Commercial Co.

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 13-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 17B

Citation : (1998) 1 CALLT 499

Hon'ble Judges : Dipak Prokash Kundu, J

Bench : Single Bench

Advocate : Mr. Manik Chandra Das, Mr. Partha Mukherjee, Mr. Anupam Chatterjee and Mr. Indranil Nandi, for the Appellant;

Judgement

D.P. Kundu, J.—This is an application for enhancement of payment of salary of the respondent No. 6 u/s 17B of the industrial Disputes Act. 1947.

2. In paragraph 6 of the application the applicant stated as follows :

"That your applicant states that apart from selling price index, the salary of the employees" of the writ petitioner company has increased considerably and he would have been get a monthly salary of Rs. 2045.15 (Rupees two thousand forty five and fifteen paise only per month at the time of passing the Award dated 24.3.94 by learned 5th industrial Tribunal, West Bengal and/or at present Rs. 3215.65p (Rupees three thousand two hundred fifteen and sixty five paise only per month if he would not have retrenched from, service by which he has been loosing a considerable amount of money during this period for which he was not in fault."

In the said application u/s 17B of the industrial Disputes Act, 1947 the applicant has made the following prayer :

"Your applicant therefore most humbly prays that Your Lordship would be graciously pleased to pass an order directing upon the writ petitioner company

for payment of salary to which he would have been entitled on the date of the Award of his reinstatement and thereafter as admissible to similarly situated workman, as mentioned in paragraph 6 of the foregoing application to the workman month by month till final disposal of writ application by this Hon"ble Court and pass such order or orders as Your Lordships should deem fit and proper for ends of justice."

3. It appears that when the writ application was moved by the writ petitioner on 15.12.94 N.K. Batabyal, J. inter alia, passed the following order :

"Learned Advocate for the petitioner is present. Learned Advocate for the workmen is present. Application u/s 17B of the industrial Disputes Act filed by the workmen kept with the records. Let the Impugned judgment and award dated 24th March, 1994 passed by the learned 5th industrial Tribunal, West Bengal as per annexure to the writ petition be stayed till further orders with a condition that the petitioner will go on paying the monthly salary to the workmen from the month of December 1994, the first such payment has to be given by the 7th day of January, 1995."

4. The learned Advocate for the applicant referred to a decision of a single Bench of the High Court in Hindustan Wires Ltd. v. Janardan Kundu, reported in 1997 LLR 1009. it appears from that decision of single Bench of this High Court that a decision rendered by a Division Bench of the Bombay High Court in Corona Sahu & Co. Ltd. v. Abdul Karim, reported in 1994 (68) FIR 421 was cited before the learned court and the learned court accepted the interpretation made by the Division Bench of the Bombay High Court in that case. Paragraph 17 of the reported decision of Hindustan Wires Ltd. case (supra) reads as follows :

"I also accepted the interpretation made by the Division Bench of the Bombay High Court that reading of the proviso of the section 17B along with the main section will indicate that the workman will be entitled to the amount which he last drew plus increment and D.A. which would accrue in the meantime. Under the facts and circumstances of the case, I am also of the view that although during the pendency of the proceedings the payment of arrear wages of the workman may be stayed, the petitioner must pay full wages to the workman month by month as admissible to a similar workman.

The application u/s 17B also stands allowed."

5. The learned Advocate for the applicant also referred to a decision, AIR 1998 511 (SC) The learned Advocate for the applicant relied up paragraph 24 of the reported decision in Dena Bank"s case (supra).

It appears that in Dena Bank"s case (supra) the Supreme Court considered the following High Court decisions, namely, (i) Vishwaswaraya Iron and Steel Ltd. v. M. Chandrappa & anr. 1994 (84) FJR 46 (Kar); (ii) Canona Sahu Co. Ltd. v. A. K. Munakhan & Ors. 1995 (70) FLR 25 (Bom); (iii) Kirtiben B. Amin v. Mafatlal Apparels 1995 (2) GLR 804 (Guj.); (iv) Macnell and Magor Ltd. v. 1st Additional

Labour Court and anr. 1995 (1) Lln 101 (Mad); (v) Fouess Eng. (India) Put Ltd. v. Delhi Administration & Ors. 1987 (1) LLJ 485 (Delhi) and (vi) P. Channaatah v. R Dy Ex. Eng. R.R. Alst. & Ors. 1996 (2) LLJ 240 (AP).

6. It further appears that the Supreme Court also considered decision in the Daladdi Cooperative Agriculture Service Society Ltd. v. Gurcriaran Singh & anr. reported in 1993 (5) SLR 719.

7. After considering the aforesaid decisions the Supreme Court in paragraph 20 and 21 of the reported decision in Dena Bank's case observed as follows :

"20. As per the decisions of the High Courts referred to above the expression "full wages last drawn" in section 17B can mean as under :

(i) wages only at the rate last drawn and not at the same rate at which the wages are being paid to the workmen who are actually working (Daladdi Cooperative Agriculture Service Society Ltd. v. Gurcharn Singh).

(ii) Wages drawn on the date of termination of the services plus the yearly increment and the dearness and allowance to the worked out till the date of the Award (Vishweshwaraya and Steel Ltd. v. M. Chandrappa and anr. and Kirbiben B. Amin v. Mafatlal Apparels)

(iii) Full wages which the workman was entitled to draw in pursuance of the Award and the Implementation of which is suspended during the pendency of the proceedings (Corona Saha Company Ltd. v. A.K. Munakhan and ors.. Macnell and Magore Ltd v. 1st Additional Labour Court and anr. and P. Channaiah v. Dy. Ex. Eng.)

21. The first construction gives to the words "full wages last drawn" their plain and material meaning. The second as well as the third construction read something more than there plain and material meaning in those words. in substance this construction read the words "full wages last drawn" as "full wages which would have been drawn". Such aa extended meaning to the words "full wages last drawn" does not find support in the language of section 17B. Nor can this extended meaning be based on the object underlying the enactment of section 17B."

Supreme Court in Paragraph 22 of the reported decision in Dena Bank's case (supra) observed that section 17B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the Award of a Labour Court or the industrial Tribunal during the pendency of the proceeding in which the said award is under challenge before the High Court or the Supreme Court, The Supreme Court observed that the object underlying the provision is to give relief to certain extent the hardship that is caused to the workman due to the delay in Implementation of the Award. Supreme Court observed that the payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would be refundable or recoverable from the workman even if the award is set aside by the High Court

or the Supreme Court. The Supreme Court observed that since the payment is of such a character 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." The Supreme Court observed that to read those words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his services had not passed since it has been set aside by the Award of the Labour Court or industrial Tribunal would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is under challenge. The Supreme Court observed since the amount is not refundable or recoverable in the event of the award being set aside it would result in the employer being required to give effect to the award during the pendency of the proceeding challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. The Supreme Court further observed--

"We are unable to construe the provisions contained in section 17B to cast such a burden on the employer, in our opinion, therefore, the words "full wages last drawn" must be given their plain and material meaning and they cannot be given the extended meaning as given by the Karnataka High Court in Visveswaraya Iron & Steel Ltd. (supra) or the Bombay High Court in Corona Sahu Co. Ltd. (supra)."

8. In Dena Bank's case (supra) it was argued before the Supreme Court that the word "full" in the expression "full wages last drawn" implies that the wages last drawn must be the wages which the workman would have drawn under the award. The Supreme Court while considering the said argument observed as follows :

"We are unable to agree in our opinion, the expression "full" only emphasizes that all the emoluments which are included in "wages" as defined in clause Err) of section 2 of the Act so as to include the amounts referred to in sub-clauses (i) to (iv) are required to be paid. in this context it may also be mentioned that in section 17B Parliament has also used the words inclusive of any maintenance allowance admissible to him under any rule. These words indicate that maintenance allowance that is admissible under any rule is required to be paid Irrespective of the amount which was actually being paid as maintenance allowance to the workman. But with regard to wages Parliament has used the words full wages last drawn indicating that the wages that were actually paid and not the amount that would be payable are required to be paid."

9. The decision rendered by the single Judge of this High Court in Hindustan Wires Ltd.'s case (supra) is no longer good law in view of the decision of the Supreme Court in Dena Bank's case (supra).

10. Paragraph 24 of the reported decision in Dena Bank's case does not help the applicant because the applicant's application has been made specifically u/s 17B

of the industrial Disputes Act and, therefore, that application has to be dealt with in accordance with law laid down by the Supreme Court in connection with section 17B of the industrial Disputes Act. Had the workman concerned made an interlocutory application unconnected with section 17B of the industrial Disputes Act possibly this court could have exercised its discretion but the application having been preferred u/s 17B of the industrial Disputes Act, I am of the view that the workman is not entitled to relief, as prayed for in the said application.

Under the circumstances the application is dismissed. There will be no order as to costs.

11. Application dismissed