

(2012) 05 DEL CK 0263

In the Delhi High Court

Case No : CM No. 10626 of 2011 in Writ Petition (C) 4019 of 2010

M/S. Shri Ram Institute for Industrial Research

APPELLANT

Vs

Rajesh Kumar Gandhi

RESPONDENT

Date of Decision : 30-05-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2012) 6 AD 249 : (2012) 193 DLT 531 : (2012) LLR 736

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Harvinder Singh, for the Appellant;

Judgement

P.K. BHASIN, J

1. This application has been filed by the respondent-workman u/s 17B of the Industrial Disputes Act, 1947(hereinafter referred to as "the Act") for payment of wages to him during the pendency of this writ petition filed by the petitioner-management against the award of the Labour Court directing it to re-instate him in service with all consequential benefits. This Court vide order dated 03.06.2010 had granted ex-parte stay of operation of the impugned award of the Labour Court subject to the deposit of 50 % of back wages with the Registrar General of this Court.

2. The respondent-workman has claimed in this application that he is unemployed and further that though after the termination of his services by the petitioner-management he had started working as an associate of one advocate after getting himself enrolled with Bar Council of Delhi but he had virtually no practice and no professional income and, in fact, it was quite humiliating experience for him to be an advocate without any professional income. It has been claimed by him that he would discontinue his enrolment with the Bar Council in case he gets an order of payment of wages as has been prayed for in this application. He has claimed payment of wages which he would have got if he

had not been dismissed from service and not what he was drawing at the time of his dismissal from service.

3. The petitioner-management has opposed this application primarily on the ground that the respondent-workman was a practicing advocate since the year 2002 and has been filing his income tax returns showing his income to the tune of Rs. 3.05 lakhs and so he was not entitled to any benefit u/s 17B of the Act. Learned counsel for the petitioner-management in support of these submissions relied upon one judgment of the Supreme Court in Administrator Kamala Nehru Memorial Hospital Vs. Vinod Kumar, one of Gujarat High Court in "Municipal Council, Sikar & Ors. v. Rawat Singh & Ors.", 2009 LLR 104 and one judgment of Allahabad High Court in "Rauf Mohmed Sheikh Vs. Pragati Glass Works Pvt. Ltd., Counsel also argued that, in any case, the respondent-workman is not entitled to get wages which he would have been drawing if he had not been dismissed from service, as has been claimed by him in this application and at the most he would get his last drawn wages as specifically provided u/s 17B of the Act itself.

4. On the other hand, learned counsel for the respondent argued that he is entitled to get an order for payment of wages to him because he was not employed in any establishment and was also not having sufficient professional income and in fact he is entitled to get wages more than what he was drawing at the time of his dismissal from service as per the Sixth Pay Commission's recommendations. As per his case he would have been getting wages amounting to over eighty thousand of rupees in the year 2009 when the impugned award was passed in his favor. In support of the claim of wages more than his last drawn wages, learned counsel relied upon the judgment of the Supreme Court in "Dena Bank vs Kirti Kumat T. Patel", (1999) SCC 106.

5. Section 17B of the Industrial Disputes Act, 1947 reads as under:-

17-B 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.

6. The phraseology of Section 17B is very clear that in case the workman who has succeeded in getting an award from the industrial adjudicator for his re-

instatement in service by his employer claims before the superior court where his employer challenges the award that he is not gainfully employed in any establishment and was not having adequate income then the superior court has no discretion but to grant him the benefit u/s 17B which is in the nature of a sustenance allowance for the successful workman so long as his employer's battle against the award before the superior court continues and not only that, the Supreme Court has also held in Dena Bank's case that the High Court can in fact grant relief more than last drawn wages also in the interest of justice. Of course, it is also now well settled that as far as last drawn wages are concerned the same are not returnable by the workman even if his employer succeeds in the superior court. In the present case, the management has not been able to show that the respondent-workman was employed in any establishment and was also having adequate income. Just because the respondent-workman was enrolled as an advocate that would not show that he was having sufficient good number of clients as also handsome professional income. In the case of the Supreme Court relied upon by the counsel for the petitioner-management the employer had brought on record sufficient material to show that the concerned workman was having good number of clients and cases and good professional income also so relief u/s 17B was denied to the workman.

7. Thus, the respondent-workman has become entitled to get the relief of payment of wages from the date of the passing of the impugned award till the disposal of this writ petition. Considering the fact that the services of the respondent-workman were terminated way back in the year 2001 and during all these years the cost of living has gone very high and since the Supreme Court has held in Dena Bank's case(supra) that the High Court can in the interest of justice grant relief better than the one provided u/s 17B of the Industrial Disputes Act the respondent deserves to be granted more than what is contemplated u/s 17B. In a recent judgment in the case of Sh. Narendra Kumar Vs. The Regional Manager Punjab National Bank and Others, the Supreme Court had also taken note of the increased cost of living while enhancing the compensation payable to the workman concerned. This is what was observed by the Supreme Court:- 4. The Labour Court vide its order dated 31-12-2007, while allowing the claim in part, has directed the respondents to pay a sum of rupees fifty thousand only (Rs 50,000) by way of compensation in lieu of reinstatement into service. The award passed by the Labour Court was the subject-matter of the writ petition before the High Court at the instance of the workman. The High Court has dismissed the writ petition in limine and thereby has affirmed the award passed by the Labour Court.

5. The learned counsel for the appellant submits that the amount of compensation awarded by the Labour Court in lieu of reinstatement into service vide its order dated 31-12-2007 is meagre and therefore, this Court may exercise its discretion and enhance the compensation awarded by the Labour Court.

6. Ordinarily, we would not have interfered with the concurrent findings of the Labour Court and the High Court. At the same time, we cannot be obdurate to the hard realities of life. In matters of this nature, a humane and pragmatic approach to the various factors, including the steep escalation in prices in the commodity market, the cost of living, the cost of education of children, etc. is required.

7. Therefore, keeping in view the peculiar facts and circumstances of this case, in our view, it would be in the interest of justice to enhance the compensation from rupees fifty thousand (50,000) to rupees one lakh (1,00,000) only. (Emphasis supplied)

Considering all the facts and circumstances of the case this Court is of the view that it will be in the interest of justice to grant the relief of payment of Rs. 15,000/- p.m. to the respondent-workman by the petitioner-management. Therefore, the petitioner-management is directed to pay to the respondent-workman Rs. 15000/- per month from the date of the passing of the impugned Award till the disposal of this writ petition. However, before that is done the workman shall give an undertaking to this Court in the form of his own affidavit within two weeks to the effect that in case the petitioner-management succeeds finally in its writ petition and it is found that he had received money in excess of what he was entitled to get he shall refund the excess amount to the petitioner-management within four weeks from the date of passing of the judgment by this Court. Thereafter, the petitioner shall clear the arrears upto May, 2012 within four weeks and in case, the undertaking is not given by the respondent-workman, the petitioner-management shall be liable to pay him only his last drawn wages after the expiry of period of two weeks being given to the workman for giving the undertaking. Future monthly payments from the month of June, 2012 onwards shall thereafter be paid to the respondent-workman on or before 10th day of each succeeding month.