
(1999) 03 MP CK 0017

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2683 of 1997

Nagar Panchayat

APPELLANT

Vs

Sunil Kumar Rawat and Another

RESPONDENT

Date of Decision : 19-03-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2000) 1 LLJ 821

Hon'ble Judges : A.K. Mathur, C.J.;Dipak Misra, J

Bench : Division Bench

Advocate : Ravindra Shrivastava, for the Appellant; R.N. Shukla, for the Respondent

Judgement

A.K. Mathur, C.J.—This is a reference made by the learned single Judge of this Court with regard to the interpretation of Section 17B of the Industrial Disputes Act, 1947. The learned single Judge by his order dated March 26, 1998 passed in W.P. No. 2683/1997, has observed that an observation in the case of State of M.P. v. Jaswant Singh 1988 (1) MPWN 57 it needs to be reconsidered in the light of the recent decision of the Hon. Supreme Court given in the case of Dena Bank v. Kirti Kumar T. Patel (1998 ILLJ 1) .

2. The brief facts which are necessary for disposal of this reference are that the Labour Court, Bilaspur, by its award dated February 13, 1997 directed reinstatement of respondent No, 1 with back wages on the basis of the conclusion that the termination of the respondent No. 1 amounted to an illegal retrenchment. The petitioner-Management neither reinstated nor paid any back-wages to the respondent No. 1. The respondent No. 1 submitted his re-joining report on March 6, 1997, but he was not taken back in duty. This Court while admitting the petition, stayed the operation of the impugned award subject to the compliance of provision of Section 17B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act for short).

3. It was contended on behalf of the respondent No. 1 that though the petitioner-

Management has complied with Section 17B of the Act from the date of presentation of the writ petition before this Court, but no payment has been made from the date of the award dated December 13, 1997. Therefore, the question arose whether the incumbent is entitled to the benefit of Section 17B of the Act from the date of award or from the date of presentation of writ petition and in support of this the learned counsel placed reliance on the various decisions of the Apex Court including that of this Court and other High Courts. We need not refer to number of cases, which have been cited by the learned single Judge. Suffice it to say that the Apex Court in the case of Dena Bank (supra) has categorically interpreted Section 17B of the Act and then answered all the questions. The Apex Court while interpreting Section 17B of the Act, held :

"As regards the powers of High Court and Supreme Court under Articles 226 and 136 of the Constitution of India, it may be stated that Section 17B, by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge to the award of the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of the award being set aside, does not in any way preclude the High Court or the Supreme Court to pass an order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a direction would be de hors the provisions contained in Section 17B and while giving the direction, the Court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. Vs. K.B. Joshi and others, that in exercise of the power under Articles 226 and 136 of the Constitution an order can be passed denying the workman the benefit granted u/s 17B. The conferment of such a right u/s 17B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution."

Therefore, their Lordships have interpreted Section 17B to mean that the amount which is paid to the incumbent, is to the extent of the last pay drawn by him. It is also observed by the Apex Court that Section 17B cannot be interpreted to cause a burden on the employer more than what it ordained. The Apex Court was conscious of the financial liability which may arise on account of the petition being dismissed. It is very difficult for the employer to recover the entire amount paid by the employer. Therefore, the expression "full wages last drawn" must be given restricted meaning and it cannot be given extended meaning that means that whenever the petition is filed by the Management challenging the award of the Tribunal then it enables the High Court or the Supreme Court to pay such workman, during the period of pendency of such proceedings, full wages last drawn by him. The expression "pendency of such proceedings" shall commence when the petition is filed before the High Court or the Supreme Court, as the case may be. It cannot "be interpreted to mean that the employer is under an obligation to pay the entire amount as an interim measure right from the date of

the award. The expression "during the period of pendency of such proceedings" only signifies that the High Court or the Supreme Court will have a jurisdiction to award the wages last drawn by the labour as a maintenance or other allowances admissible to him from the date of pendency of the proceedings. Therefore, the jurisdiction of the Court will only arise from the date of pendency of the proceedings in the High Court or the Supreme Court and prior to that, the Court cannot grant a maintenance, i.e. from the date of the award. Therefore, the observation made in the case of *State of M.P. v. Jaswant Singh*, (supra) by the Gwalior Bench of this Court is wide off mark and does not lay down the correct position. Therefore, Section 17B means that the High Court will have a right to award a maintenance to the workman in the event of not being reinstated by the employer, wages last drawn by him including maintenance allowance admissible to him from the date of pendency of such proceedings before the High Court or Apex Court and not from the date of award.

4. The reference is accordingly answered and the case is remitted back to the single Bench to decide the matter in accordance with above observation.