

(1995) 02 MP CK 0053

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2920 of 1994

Raja Ram Maize Products

APPELLANT

Vs

State Industrial Court and Another

RESPONDENT

Date of Decision : 20-02-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Madhya Pradesh Industrial Relations Act, 1960 — Section 65(3)

Citation : (1998) 3 LLJ 727

Hon'ble Judges : M.V. Tamaskar, J

Bench : Single Bench

Advocate : R.K. Gupta, for the Respondent

Judgement

M.V. Tamaskar, J.—The order passed in this writ petition shall also govern the disposal of Writ Petition No. 3057 of 1994 (Raja Ram Maize Products v. State Industrial Court), Writ Petition No. 3058 of 1994, (Raja Ram, Maize Products v. State Industrial Court) and Writ Petition No. 3059 of 1994 (Raja Ram Maize Products v. State Industrial Court). In all those petitions the workman was dismissed in 1985. The said dismissal was challenged before the Labour Court. The Labour Court decided the matter in favour of the worker holding that the worker was entitled for reinstatement and three-fourths backwages.

2. The said order of reinstatement has been challenged before the State Industrial Court, Bench at Raipur. The State Industrial Court by order dated August 4, 1994, directed to make payment of full wages last drawn u/s 65(3) of the Madhya Pradesh Industrial Relations Act. Section 65(3) of the Madhya Pradesh Industrial Relations Act reads thus :

"(3) Where in any case, a Labour Court, by its order directs reinstatement of any employee and the employer prefers an appeal before the Industrial Court against such order, or any proceedings against the order of the Industrial Court in the High Court or the Supreme Court, as the case may be, the employer shall be liable to pay such employee during the period of pendency of such appeal, in the

Industrial Court or such proceedings in the High Court or the Supreme Court, as the case may be, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the employee had not been employed in any establishment during such period and an affidavit by such employee had been filed to that effect in such Court."

Section 65(3) was amended to make it in line with the provisions of Section 17B of the Industrial Disputes Act, 1947. The Industrial Court relying on certain decisions held that the last wages drawn shall mean the wages which the worker would have received had he been continuing in service on the date of award. The said order is being challenged in this petition.

The submissions of learned counsel for the petitioner are that the learned Industrial Court has wrongly interpreted Section 65(3) of the Madhya Pradesh Industrial Relations Act in interpreting the phrase "last wages drawn". His submission is that Section 65(3) of the Madhya Pradesh Industrial Relations Act being in pari materia with Section 17B of the Industrial Disputes Act should receive the same meaning.

3. The Objects and Reasons necessitating the introduction of Section 17B in the Industrial Disputes Act, are as under:

"When Labour Courts pass awards of reinstatement these are often contested by an employer in the Supreme Court and High Courts. It was felt that the delay in the implementation of the award causes hardship to the workman concerned. It was, therefore, proposed to provide for the payment of wages last drawn by the workman concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or the High Courts."

4. The Supreme Court has taken note of that even before Section 17B was enacted, the Courts were in their discretion awarding wages to workmen when they felt such a direction was necessary, but that was only a remedy depending upon Court to Court. It was also observed that instances are legion where workmen have been dragged by employers in endless litigation and fight between the employees and employer is often unequal. The Legislature was aware that because of the long pendency of disputes in the Tribunals and the Courts, on account of dilatory tactics adopted by the employer the workmen suffer and in this background this Section was introduced. The Supreme Court also observed that, while interpreting the statute, the Courts have steered clear of the rigid stand of looking into the words of Section alone but have attempted to make an object effective and to render its benefits to the person in whose favour it was made.

5. The orders of termination were passed in these cases in the year 1985, and the award could be made only in the year 1994. Against the said award the employer has gone to the Industrial Court. The Industrial Court relying on the decisions of the Bombay High Court, has held that the interpretation on the phraseology "last wages drawn" would receive the meaning as wages he would

have actually drawn had he remained in service. The decision of the Bombay High Court in *Carona Sahu Co. Ltd. Vs. Abdul Karim Munafkhan and Others*, : interpreted the words "full wages last drawn" which the workman was entitled to draw pursuant to the award which has been stayed in the High Court. In the instant case, the Bombay High Court emphasised that component of the wages payable on the date, of the award must also be taken into consideration for determining what were the wages payable to the workman on the date of the award.

6. The Delhi High Court in *Fouress Engineering (I.) Pvt. Ltd. v. Delhi Administration* (1992-I-LLJ-710), held that the phraseology of Section 17B is very clear. It leaves no discretion to the Court where proceedings are pending the employer is required to pay the workman full wages last drawn by him during the pendency of. the proceedings in the High Court or the Supreme Court. The argument was that the last drawn wages would be those which were drawn during the period of service. The backwages is just a convenient expression. The statutory provision requires full wages last drawn by the workman to be paid to him. "Full wages" means full wages during the course of employment and not what was paid upon termination of employment. The Court considered that the Single Judge could have revised his order directing payment of backwages or arrears payable to the employee even without the aid of Section 17B of the Industrial Disputes Act and as such the order was maintained.

7. The question for consideration, therefore, is whether the interpretation placed by the two Courts is against the language of Sections as pointed out by the Supreme Court that due to dilatory tactics of the employer the workman remains out of employment for a long time and in order to give relief to the worker the present Section 17B has been introduced and the Court should attempt to interpret the Section in order to fulfil the intention of the Legislature. The intention of the Legislature cannot be interpreted in such a way which would cause hardship to the worker.

8. There is yet another aspect of the case It is true that in Section 17B of the Industrial Disputes Act or Section 65(3) of the M.P. Industrial Relations Act the words "from the date of the award" have not been defined but having regard to the objects and reasons stated in *Bharat Singh v. New Delhi Tuberculosis Centre*, one can come to the conclusion that the date from which the full wages last drawn are to be paid should be the date of the award. Wages as defined u/s 2(rr) of the Industrial Disputes Act reads as under:

"(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes--

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles ;

(iii) any travelling concession ;

(iv) any commission payable on the promotion of sales or business or both ;

but does not include --

(a) any bonus ;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force ;

(c) any gratuity payable on the termination of his service."

9. It has been held by the Karnataka and Bombay High Courts that the full wages last drawn should not only include the wages drawn on the date of termination plus yearly increment but also revision of pay, if any, effected during the pendency of the proceedings before the Labour Court. The wages that could be worked out up to the date of the award shall have to be paid during the pendency of the proceedings before the Appellate Court or the High Courts or the Supreme Court, as the case may be. Shri R. K. Gupta, learned counsel for the respondent supported the order passed by the Industrial Court relying on the judgments in Carona Sahu Company Ltd. v. Abdul Karim Munakhan, (supra) and order in M. P. No. 1992 of 1985 passed by this Court in M. P. State Cooperative Marketing Federation Ltd. v. Presiding Officer, Labour Court, Raipur, dated April 26, 1991, it was held that the employer was duty bound and liable to pay the workman wages at the current rate for the period after his reinstatement remain unaltered whether the petition succeeds or is dismissed,

10. Agreeing with the view of the Bombay High Court, I am of the view that the last wages drawn should mean the actual wages or current wages that the workman would be entitled on the date of the award and not on the date of termination. The writ petitions filed are, therefore, dismissed with costs. Costs Rs. 100 in each case.