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**(2006) 11 RAJ CK 0042**  
**In the Rajasthan High Court**

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|-------------------------------------------------|------------|
| Rajasthan State Granite and Mars. Mazdoor Sangh | APPELLANT  |
| Vs                                              |            |
| Rajasthan Mines and Minerals Ltd. and Others    | RESPONDENT |

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**Date of Decision :** 15-11-2006

**Acts Referred:**

Constitution of India, 1950 — Article 136, 226  
Industrial Disputes Act, 1947 — Section 12, 13, 17, 17B, 7B

**Citation :** (2007) 112 FLR 1236 : (2007) 1 RLW 387

**Hon'ble Judges :** S.N. Jha, C.J.; Mohammad Rafiq, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

S.N. Jha, C.J.—This special appeal is directed against the order of the learned Single Judge dated 20.2.2006 in S.B.C.W.P. No. 5430/2003 rejecting the application u/s 17B of the Industrial Disputes Act. The learned Single Judge observed as under:

The petitioner has disputed that the respondent-workman is not the employee of the dispute with regard to the employer. Under such circumstances, I am not inclined to accept that the respondent-work-man can be granted any relief u/s 17 of the Act while the petitioner being not his employee.

2. We are afraid, the learned Judge completely misdirected himself in rejecting the application on the aforesaid ground. Before noticing the submission of the counsel for the respondents in support of the order we may observe that if the claim of the employee were to be rejected on the ground that the relationship of employer and employee is disputed by the employer, perhaps, in no case the employee would be able to obtain the benefit of wages provided u/s 17-B of the Act.

3. The case of the Management/employer is that the employees in question are not its employees and therefore, it is not liable for wages in terms of Section 17-B. In our opinion, the only enquiry which can be made u/s 17-B is as to whether

the employee concerned was in gainful employment during the relevant period or not. This would be evident from a bare reading of Section 7B which runs as under:

17B. 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.

4. On a bare reading, it is evident that where the employer prefers any petition/proceedings against the award directing reinstatement of any workman in the High Court or the Supreme Court "the employer shall be liable to pay such workman during the pendency of such proceedings" in the High Court or the Supreme Court (as the case may be), "full wages last drawn by him if the workman had not employed in establishment during such period and affidavit by such workman has been filed to that effect." We are of the view that in terms of the express provision of Section 17-B, the workman is only required to file affidavit to the effect that he is not gainfully employed and where such affidavit is filed, the burden lies on the employer to prove his case that he is so gainfully employed. Section 17-B does not admit of any further enquiry.

5. Counsel for the respondent in support of the case placed reliance on Regional Authority, Dena Bank and Another Vs. Ghanshyam, . Reference was made to paras 10, -12 and 13 of the judgment. Referring to para 10 it was submitted that it is open to the High Court in appropriate cases to stay the operation of the award in its entirety. According to the counsel, if the award can be stayed in its entirety, any positive order in terms of Section 17-B would be inconsistent with the stay of the award. The submission is totally misconceived. By virtue of the stay, the employer is relieved of the obligation to re-instate the employee or pay him back wages or both - as the case may be. On the other hand, direction for payment of wages u/s 12-13 relates to the period of pendency of the other proceedings in the Supreme Court/High Court. The object is to protect the interest of the employee pending adjudication of his case at the instance of the employer, the orders of stay and payment of wages u/s 7-B operate in separate fields.

6. As a matter of fact, the observations in paras 10 and 12 contain enough indications to the effect that a "better" order than the one provided u/s 17-B can be passed "over and above" the amount payable in a particular case.

7. It is relevant to mention here that decision in the above case was rendered following an earlier decision in AIR 1998 511 (SC) Perusal of the relevant

observations in para 23 of the judgment in that case shows that High Court is competent to direct the employer to pay higher amount to the workman if such higher amount is necessary in the interest of justice. We may profitably quote the observations so far as relevant in this case as under:

But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. 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 17-B. The conferment of such a right u/s 17-B 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.

8. In the above premises, we are satisfied that the learned Single Judge committed an apparent error of law in rejecting the application u/s 17B on the specious ground of denial of relationship of employer and employee.

9. It may not be out of place to mention here that the reference in the instant case was between the Rajasthan State Mineral Development Corporation, Jaipur and Rajasthan State Granites & Marbles Limited, Jaipur on the one hand and the Rajasthan State Granites & Marbles Mazdoor Sangh on the other hand. By the impugned award, the Labour Court directed reinstatement of the concerned employees and back-wages to the extent of 25%. It is not open to the respondent to challenge the validity of the award at the stage of consideration of the application u/s 17-B and on that ground deny the claim of the workman for wages as admissible under that Section.

10. As a result, the application of the workman stands allowed with a direction to the respondent/writ petitioner to pay full wages last drawn by the concerned workman in accordance with Section 17-B of the act. The order of the learned Single Judge dated 20.2.2006 is set aside and. the appeal is accordingly allowed.