
(2005) 01 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Special Appeal No. 358 of 2004

Ram Singh and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-01-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 25F, 25G, 25H
Rajasthan High Court Ordinance, 1949 — Ordinance 18

Citation : (2005) 2 RLW 993 : (2005) 2 WLC 58

Hon'ble Judges : Sunil Kumar Garg, J;N.N. Mathur, J

Bench : Division Bench

Advocate : R.S. Saluja, for the Appellant; H.R. Soni, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This special appeal under Ordinance 18 of the Rajasthan High Court Ordinances, 1949 (for short "the Ordinances of 1949") has been filed by the appellants against the order dated 3.3.2004 passed by the learned Single Judge of this Court in S.B. Civil Writ Petition No. 261/2003 by which the learned Single Judge dismissed the application filed by the appellants u/s 17B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947").

2. The facts giving rise to this special appeal may be summarized as follows;

The appellants' services were terminated vide order dated 31.3.1992 passed by the respondents and thereafter, the State Government through Notification dated 1.5.1997 referred the following dispute to the Labour Court, Bikaner for adjudication:-

"Whether the termination of services of workmen Sh. Ram Singh Jat and Ors. on 31.3.92 by the employer Dy. Conservator of Forests, Churu and the Range Forest Officer, Taranagar is legal and justified? If not, to what relief and amount they are entitled for?"

Before the Labour Court, Bikaner, the appellants submitted their claims and the respondents also filed their reply and the Labour Court, Bikaner, after hearing both the parties, passed the judgment and award dated 1.12.2001 in favour of the appellants holding inter-alia that the termination of services of the appellants was in contravention of the provisions of Sections 25F, 25G and 25H of the Act of 1947 and therefore, the appellants were entitled to reinstatement with continuity in service. It was further observed by the Labour Court that since the appellants have not worked with the respondents after termination, therefore, they were not entitled for wages for that period and for that, the Labour Court awarded Rs. 2500/- as compensation to each of the appellants, but it was further observed by the Labour Court that the appellants were entitled to wages from the date of award till their reinstatement.

Aggrieved from the said judgment and award dated 1.12.2001 passed by the labour Court, Bikaner, the respondents preferred writ petition being S.B. Civil Writ Petition No. 261/2003 before this Court and in that writ petition, this Court vide interim order dated 21.1.2003 ordered that the relief granted by the labour court to the extent of full back wages shall remain stayed.

During the pendency of the above writ petition, an application u/s 17B of the Act of 1947 was moved on behalf of the appellant stating inter-alia that since from the date of termination of their services on 31.3.1992, the appellants are unemployed and without any means of livelihood and since they have not been reinstated by the respondents, in pursuance of the judgment and award of the Labour Court, therefore, the respondents be directed to pay to the appellants salary last drawn by them alongwith the increments and other benefits etc.

The learned Single Judge of this Court through impugned order dated 3.3.2004 dismissed the said application filed by the appellants u/s 17B of the Act of 1947 holding inter- alia that he was not inclined to accept that application any by the same order, the interim order granted by this Court on 21.1.2003 was confirmed.

Aggrieved from the said order dated 3.3.2004 passed by the learned Single Judge of this Court, the appellants have preferred this special appeal.

3. In this special appeal, the main contention of the learned counsel for the appellants is that when the appellants have filed affidavits in support of their contention that they are unemployed and without any means of livelihood since the date of termination of their services on 31.3.1992 and the respondent have failed to show that the appellants are gainfully employed anywhere, therefore, in view of this, dismissal of the application u/s 17B of the Act of 1947 by the learned Single Judge during the pendency of writ petition was manifestly erroneous one and against the well established principles of law and thus, the impugned order dated 3.3.2004 cannot be sustained and liable to be quashed and set aside.

4. On the other hand, the learned counsel for the respondents has supported the impugned order dated 3.3.2004 passed by the learned Single Judge of this Court.

5. We have heard the learned counsel for the appellants and the learned counsel for the respondents and gone through the entire materials available on record.

6. Before proceedings further, the object of Section 17B of the Act of 1947 and the pre requirement for invoking that Section may be enumerated here,

7. The object of Section 17B of the Act of 1947 is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court.

8. The pre-requirements for invoking Section 17B of the Act of 1947 are:-

(i) the award of the tribunal should have directed reinstatement of the workman on setting aside the order of his dismissal or unfair termination of service;

(ii) the employer should have preferred proceedings against such award before High Court or the Supreme Court;

(iii) the workman should not have been gainfully employed in any establishment during the pendency of the proceedings; and

(iv) as a proof of that, the workman should have filed an affidavit before the court before which the proceedings have been preferred.

9. If the above pre-requirements are kept in mind, there can be no dispute on the point that in the present case, the Labour Court passed the award in favour of the appellants and ordered for their reinstatement after holding termination of their services vide order dated 31.3.1992 as illegal and bad in law and against that award, writ petition is pending before this Court and since the application u/s 17B of the Act of 1947 was supported by the affidavits of the appellants stating that they are not employed anywhere meaning thereby at that stage, the fact that they were not gainfully employed in any establishment was also prima facie established.

10. It may be stated here that once the above requirements are satisfied, the workman becomes entitled to the wages as contemplated by Section 17B of the Act of 1947 and no order of the court, before which the proceedings are pending, is necessary for entitling him to such wages, as the statute itself creates the right. In other words, Section 17B of the Act of 1947 codifies the right of a workman to get the wages and quantifies the amount of such wages payable to him during the pendency of the proceedings before a High Court or the Supreme Court, as the case may be.

11. It may further be stated here that in such a situation where the workman had not been employed in any establishment during such period, the employer would be liable to pay the last drawn wages to the workman. Section 17B of the Act of 1947 is mandatory in character and it gives a mandate to the court to award full wages if the conditions enumerated in Section 17B are fully satisfied.

12. It is made clear that benefits of last drawn wages to the workman are payable from the date of initiation of writ proceedings before the High Court and not from the date of award.

13. Thus, in view of the discussion made above, dismissal of the application u/s 17B of the Act of 1947 by the learned Single Judge of this Court vide order dated 3.3.2004 appears to be manifestly erroneous and against the well established principles of law. Apart from this, there is no dispute on the point that the application u/s 17B of the Act of 1947 was dismissed by the learned Single Judge without discussing the merits of the case and dismissal of the application without discussing the necessary ingredients of Section 17B makes the impugned order unsustainable in law.

14. For the reasons slated above, the impugned order dated 3.3.2004 passed by the learned Single Judge dismissing the application of the appellants filed u/s 17B of the Act of 1947 without discussing the merits of the case, cannot be sustained and liable to be quashed and set aside as the same appears to be manifestly erroneous and against the well established principles of law and it appears to be just and proper to remand the matter back to the learned Single Judge to consider and decide the application of the appellants filed u/s 17B of the Act of 1947 afresh on merits in accordance with law and to that extent, this special appeal deserves to be allowed.

15. Before parting with this judgments, on maintainability of this special appeal under Ordinance 18 of the Ordinances of 1949, it can be said that the Hon'ble Supreme Court in Employer in Relation to Managment of Central Mine Planning and Design Institute Ltd. Vs. Union of India and Another, has observed that the order passed by the learned Single Judge on application u/s 17B of the Act of 1947 could be classified as judgment and therefore, appealable and from this point of view, the order passed by the learned Single Judge of this Court on the application u/s 17B of the Act of 1947 is a judgment appealable under Ordinance 18 of the Ordinances of 1949 and thus, the present special appeal is maintainable.

Accordingly, this special appeal filed by the appellants is allowed in the manner that the impugned order dated 3.3.2004 passed by the learned Single Judge dismissing the application of the appellants filed u/s 17B of the Act of 1947 is quashed and set aside and the matter is remanded back to the learned Single Judge to consider and decide the application of the appellants filed u/s 17B of the Act of 1947 afresh on merits in accordance with law.