
(2016) 03 GUJ CK 0083
In the Gujarat High Court

Case No : Civil Application (for Direction) No. 3273 of 2013 in Special Civil Application No. 13784 of 2012 and Special Civil Application No. 13784 of 2012

Ramesh Prahladbhai Patel

APPELLANT

Vs

Gujarat State Cooperative Marketing Federation Limited and Others

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2016) 03 GUJ CK 0083

Hon'ble Judges : K.M. Thaker, J.

Bench : Single Bench

Advocate : P.H. Pathak, Advocate, for the Appellant; G.M. Joshi, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

K.M. Thaker, J.—1. When the application is called out, learned advocate for the applicant is not present. Learned advocate for the opponent is also not present. The Court is informed that learned advocate for the applicant has filed leave note.

2. This application seeking payment of wages in accordance with Section 17B of the Industrial Disputes Act, 1947 (herein after referred to as the Act), is taken out in April, 2013 and since then the application is adjourned 66 times.

3. During the said period, reply affidavit, rejoinder affidavit and further affidavit are filed by the parties to this application. One affidavit, last in point of time, came to be filed in September, 2013, by present opponent No. 1. Thereafter, either side has not filed any affidavit despite several adjournments since then. Therefore, it is safe to assume that the parties do not intend to file any other or further affidavit as to the factual aspects.

4. Having regard to above mentioned facts and more particularly, the fact that

the application is pending on admission board since 2013 and has been already adjourned 66 times, the Court considers it appropriate to decide the application even in absence of learned advocates and pass appropriate order having regard to the facts of the case.

5. The applicant of present application is original respondent in Special Civil Application No. 13784 of 2012 which is filed by present opponent against the award dated 04.11.2011, passed by the learned Labour Court in Reference (L.C.M.) No. 333/08, as well as, the order dated 22.08.2012 passed in Misc. Application No. 1/12.

6. From the record, it has emerged that the learned Labour Court at Mehsana passed award dated 04.11.2011 in Reference (L.C.M.) No. 333/08 and partly allowed the Reference directing present opponent to reinstate present applicant on his original post with continuity of service and 60% back-wages.

7. It appears that opponent herein i.e. original petitioner claimed that the said award was passed in absence of the petitioner and without hearing the petitioner-employer, and that therefore, the petitioner preferred an application seeking that the said award dated 04.11.2011 may be recalled and reference may be restored for fresh hearing. The said application was registered as Misc. Application No. 1/12. The learned Labour Court considered the said application and vide order dated 22.08.2012, rejected the said Misc. Application.

8. Feeling aggrieved by the said award dated 04.11.2011 and the order dated 22.08.2012, the opponent herein filed above mentioned petition i.e. Special Civil Application No. 13784 of 2012. The Court considered the petition and after hearing learned advocate for the petitioner (i.e. present opponent) and the learned advocate for the workman (i.e. present applicant) admitted the writ petition vide order dated 27.11.2012 and also granted interim relief against the implementation and operation of the award on the condition that the employer shall comply the provision under Section 17B of the Act. The said order dated 27.11.2012 reads thus:--

"Rule returnable on 26.02.2013. Mr. Pathak, learned counsel waives service of rule on behalf of the respondent.

In the meantime, the impugned award passed by the Court below is stayed subject to compliance of the provisions of Section 17B of the I.D. Act."

9. The said order is in operation even as of now. It is not the case of present applicant or present opponent that the said order dated 27.11.2012 is vacated and/or modified in any manner.

10. It appears that though the Court, vide order dated 27.11.2012, directed the petitioner to comply the condition under Section 17B of the Act i.e. to pay last drawn wages, the opponent herein i.e. the original petitioner did not start payment of last drawn wages to the applicant-workman.

11. It appears that the petitioner i.e. present opponent awaited an application/ his affidavit by the respondent workman declaring that he is not gainfully employed. Probably, for want of such application/affidavit, the original petitioner did not start payment of last drawn wages to the workman.

12. It appears that upon being compelled (due to non-payment of last draw wages as per Section 17B of the Act), the workmen, in or around April, 2013, circulated present application and prayed, inter alia, that:--

"6(A) The Hon"ble Court be pleased to direct the opponent to pay the full wages to the applicant from 04.11.2011 to 27.11.2012 and thereafter, as per Section 17B of the I.D. Act with 18% interest."

13. So as to support and justify the said request, the applicant has averred and stated in the application that:--

"2. It is submitted that the applicant had after the award of the Labour Court approached to the Opponent reporting for duties but he was not reinstated in services. That in the affidavit in reply also the workman has pointed out that the award of the Labour Court was not complied with. The workman is unemployed. The applicant is ready and willing to resume the duties. I say that I am not gainfully employed in any establishment nor getting any remuneration from any establishment.

3. The order passed by the Hon"ble Court granting stay subject to compliance of Section 17B of the I.D. Act on 27.11.2012. But the opponent had not complied with the same. And there for the applicant has to file the present application."

14. In response to the said application, the petitioner-employer filed an affidavit and opposed the relief prayed for by the applicant. The petitioner-employer claimed in his affidavit that:--

"1. I have gone through the Civil Application filed on behalf of the applicant workman and as I am conversant with the facts involved I am competent to depose what is stated in the present affidavit that may be taken on record.

2. I submit that the present application is not competent in as much as the application is not supported by an affidavit required as per law. I submit that the workman has not stated which facts are true and correct and what is based on legal advice. I submit that a separate application is required under Section 17B. I submit that in present application only a statement is made to the effect that the workman is unemployed which is not true. I state that the workman is employed in Golf Ceramic, At & Po Balol, Dist: Mehsana and therefore, he is gainfully employed."

15. The said reply affidavit by the petitioner-employer was responded to by the applicant who filed rejoinder affidavit and stated, inter alia, that:--

"2. I say that the contentions of application is supported by the affidavit and I reiterated the same. I say that I am not employed in Gold Ceramic at Balol Dis.

Mehsana as started by respondents. I reiterated that I am unemployed and ready to resume duty. To delay compliance of Section 17B and payment of arrears a wrong statement is made. I call upon respondents to produce proof of my serving with Gold Ceramics. I reiterate that as I am employed I requested for reinstatement in services.]

3. I reiterate that I am ready and willing to resume duty. That after the award the respondents have not offered reinstatement to me even I have requested for the same."

16. From the above mentioned details, it emerges that after the Court passed order dated 27.11.2012, admitting the petition, present application (supported by an affidavit) came to be filed/circulated somewhere in April, 2013.

17. The Hon"ble Division Bench of this Court has held, in the judgment dated 12.05.2011 in Letters Patent Appeal No. 531 of 2008, the employers obligation to pay last drawn wages would commence from the date when the workman files an affidavit declaring that he is not gainfully engaged and he is not earning any remuneration.

18. In present case, the applicant has averred in para 2 of this application that he is unemployed and that he is not gainfully employed in any establishment and he is not getting any remuneration from any establishment.

19. The said application is supported by an affidavit, seems to have been prepared and affirmed in December, 2012, however, it seems to have been circulated for orders in April, 2013.

20. Thus, the workmans declaration that he is not gainfully employed was effectively placed before the Court (and a copy thereof was served to learned advocate for the employer) and on from 16th/29th April, 2013.

21. As against the said declaration, the petitioner-employer raised objections vide his affidavit wherein the employer claimed that the application is not competent and it is not supported by an affidavit.

22. The applicant has stated in the application that The workman is unemployed. The applicant is ready and wiling to resume his duty. I say that I am not gainfully employed in any establishment nor getting any remuneration from any establishment.

22.1 The said averment, statement and declaration are made by the applicant in para 2 of the application and the said application is supported by affidavit made by the applicant.

22.2 The said statement and declaration made on oath the (inasmuch as application is supported by workmans affidavit) amounts to sufficient compliance of the requirement prescribed by Section 17B viz. that the workman should file an affidavit regarding (a) unemployment; and (b) not earning any remuneration.

23. Once the said two declaration are made on oath, then it would amount to sufficient compliance of said statutory requirement.

24. On this count, it is necessary to note that the provision under Section 17B of the Act is a beneficial provision for workmen and aims at providing some relief during the times he faces further litigation after succeeding before learned Labour Court/Industrial Tribunal.

24.1 The legislature has not prescribed any form or manner in which the application and/or the affidavit must be filed. The section merely prescribes that requisite declaration should be made on oath by filing an affidavit.

24.2 The Rules framed under the Act do not prescribe any form. Thus, if the workman files an application seeking compliance of Courts interim order and payment of last drawn wages in accordance with Section 17B of the Act and if he makes requisite declaration prescribed by Section 17B in the application and if such application is supported by an affidavit then it would amount to sufficient compliance of statutory requirement.

24.3 In respect of such beneficial provision, and the Court would not read anything additional into the requirement prescribed by law and Court would not add further condition or requirement by holding that the affidavit must be separate and in addition to the affidavit made in support of the application which contains the requisite declaration.

24.4 The duty of the Court is to advance and achieve the object and spirit of the provision and that therefore, Court would not construe a beneficial provision in such a way that instead of advancing and achieving the object its direction may burden and overload the provision with ultra technicality which may, instead of advancing the purpose and spirit of the provision frustrate the provision or may delay the workmans claim and right flowing from beneficial provision and the workman may get entangled in time consuming and expensive process.

24.5 In view of this Court application filed by the workman which is supported by an affidavit and contains requisite and prescribed declaration, is sufficient compliance of statutory condition prescribed by Section 17B of the Act.

24.6 Actually in present case the applicant has subsequently filed another affidavit i.e. above mentioned rejoinder affidavit dated 22.06.2013.

25. The petitioner-employer also claimed in his affidavit dated 19.03.2013 that according to information available with the employer, the applicant workman is gainfully employed in an establishment viz. Golf Ceramic, At and Post Balol, Dist. Mehsana.

26. The said affidavit and assertion of the petitioner-employer is countered by the applicant-workman with his rejoinder affidavit dated 22.06.2013, wherein the applicant again declared that he is unemployed and that he is ready to resume his duty.

27. The petitioner-employer thereafter, filed affidavit dated 17.09.2013 alleging, inter alia, that the workman is pressurizing the employer to pay full back-wages.

28. However, in the said affidavit dated 17.09.2013, the petitioner-employer has not come out with any evidence either to support its assertion made in the affidavit dated 19.03.2013 or to controvert the claim of the workman in affidavit dated 22.06.2013 that he is unemployed.

29. It is pertinent that except making bald statement in the affidavit dated 19.12.2013, the petitioner employer has not placed any evidence/material on record to support his allegation and claim that the workman is gainfully employed in the said Golf Ceramic, At and Post Balol, Dist. Mehsana, or in any other establishment. Ordinarily, it is always easier to establish positive assertion than the negative one. It would be easier for the petitioner-employer to support his claim that the workman is gainfully employed rather than for the workman to establish that he is not gainfully employed. Once the workman has made the declaration on oath then the burden shifts to the employer. In absence of any evidence, e.g. certificate by the employer of Golf Ceramic (At and Post Balol, Dist. Mehsana) certifying that the workman is employed in his establishment or any other material to even prima-facie support the allegation and the claim that the workman is gainfully employed, the workmans demand for compliance of Courts order and the condition under Section 17B of the Act cannot be denied, more so when the Court has granted interim relief on the condition that the employer shall comply condition under the Section 17B of the Act.

30. Of course, the claim raised by the workman-applicant that he should be paid full-wages at the rates which prevail now does not deserve to be granted. The applicant has not made out any ground to modify Courts interim order and to grant relief in excess of what is prescribed under Section 17B of the Act. There is no justification to grant such benefit. Moreso when the Court, while passing the order dated 27.11.2012 has not granted such relief and the condition direction passed by the Court obliges the employer to pay wages in accordance with Section 17B of the Act. The said section provides for payment of last drawn wages. Thus, the claim for full wages at the rates which prevail now cannot be granted in this application. Any case for such relief is not made out. Therefore, the said request is rejected.

31. The Court has noticed that by filing above mentioned replies objections the employer has consumed more than 3 years after the Courts order dated 27.11.2012 and not complied the order and/or the condition under Section 17B of the Act.

32. In this view of the matter, following order is passed:--

"Having regard to the fact that the application claiming compliance of Section 17B of the Act came to be circulated for appropriate orders for the first time in April, 2013 (after serving a copy thereof to the learned advocate for the employer somewhere in March, 2013) and having regard to the fact that the

workman filed the rejoinder affidavit in June, 2013, it appears appropriate and necessary to direct the petitioner employer to pay last drawn wages to the applicant in accordance with Section 17B of the Act with effect from 17.04.2013, i.e. when the Court passed first order in present application."

33. The petitioner employer shall pay the arrears before 10.04.2016 and the petitioner shall continue to regularly (i.e. before 10th day of every month) pay last drawn wages to the applicant-respondent workman.

34. It is clarified that in view of the fact that interim order/interim relief is conditional, if the condition under Section 17B of the Act is not complied then the non-compliance would tantamount to vacation of interim relief.

It is further clarified that if the arrears are not paid on or before 10.04.2016, then it shall carry interest at the rate of 6% p.a. From 17.04.2013.

With the aforesaid direction, present application is disposed of.

Office shall list the petition in the cause list for final hearing according to its seniority.