

(2005) 06 KL CK 0040

In the High Court Of Kerala

Case No : I.A. No. 4850 of 2005 in Writ Petition No. 28988 of 2004

Sasikala Kumari

APPELLANT

Vs

Piravathoor Service Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 14-06-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2005) 107 FLR 393 : (2005) 3 KLT 585 : (2006) 1 LLJ 811

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : N. Raghuraj, for the Appellant; P. Santhalingam, for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—This is an application filed invoking Section 17-B of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act", for short.

2. The applicant, the fifth respondent in the Writ Petition, is the workman who is the beneficiary of Exhibit P4 Award passed by the Labour Court, directing her reinstatement with 50% back wages. This Writ Petition was admitted on 4-10-2004. The operation of the Award stands stayed as per order dated 4-10-2004, extended until further orders on 3-11-2004.

3. The applicant has sworn to an affidavit in support of this application, stating that she is not employed after the termination of her services by the writ petitioner -employer and that her last drawn wages was at the rate of Rs. 756/- per month.

4. A counter affidavit is filed on behalf of the writ petitioner, the first respondent in this application, reiterating the challenge to the impugned Award and contending further that the guilt of the workman has also been established in an yet another proceeding, an arbitration under the Kerala Co-operative Societies Act and Rules thereunder, the Award passed wherein is produced along with the

said counter affidavit as Exhibit P5.

5. Section 17-B has been enacted by Parliament with a view to give relief to a workman, who has been ordered to be reinstated under the award of a Labour Court or the Industrial Tribunal, during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court. The object underlying the provision is to relieve, to a certain extent, the hardship that is caused to the workman due to delay in the implementation of the award. The payment that is required to be made by the employer to the workman is in the nature of subsistence allowance, which would not be refundable or recoverable from the workman even if the High Court or the Apex Court sets the award aside. (See AIR 1998 511 (SC) .

6. Section 17-B of the Act reads as under:

"17-B. 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:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

The three necessary ingredients for the application of this section are:

- (i) the Labour Court should have directed reinstatement of the workman,
- (ii) the employer should have preferred proceedings against such award in the High Court or in the Supreme Court,
- (iii) the workman should not have been employed in any establishment during such period.

7. As already noticed, Exhibit P4 Award impugned in this Writ Petition is one by a Labour Court, ordering reinstatement. The employer has filed this Writ Petition, challenging the said Award. The same has been admitted. The averments of the applicant workman, in her affidavit filed in support of this application, regarding her continued unemployment and the full wages last drawn by her are not disputed in the counter affidavit on behalf of the employer. Thus, the necessary ingredients of Section 17-B are satisfied. The situation would not have been different even if this Court had not granted the order of stay of operation of the

Award. (See Commandant, Defence Security v. Secretary, N.C.C.G.U.E. Association 2001 (2) KLT 104).

8. It is, however, urged on behalf of the employer that the guilt of the workman has been established in Exhibit P5 Award passed under the Kerala Co-operative Societies Act and Rules and that, therefore, the direction sought for by the workman be refused. The Court has no jurisdiction to direct non-compliance with the employer's obligations u/s 17-B of the Act, when the necessary ingredients of that section exist. There is no jurisdiction to do so when the condition precedent for passing an order in terms of Section 17-B of the Act is satisfied, and this is the legislative mandate contained in the said provision. (See Ch. Saraiah Vs. Executive Engineer, Panchayat Raj Department and Another, . Hence the objection of the employer is over-ruled.

9. Therefore the writ petitioner - employer is liable to pay the workman, during the period of pendency of this Writ Petition, full wages last drawn by her, that is, at the rate of Rs. 756/- per month. It is so declared.

In the result, this interlocutory application is allowed and the writ petitioner employer, the first respondent in this application is directed to pay the applicant workman, full wages last drawn by her, that is, at the rate of Rs. 756/- per month, during the period of pendency of this Writ Petition. No order as to costs.