
(2013) 11 RAJ CK 0038

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 208 of 2013

Sitaram

APPELLANT

Vs

Municipal Board and Another

RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2013) 11 RAJ CK 0038

Hon'ble Judges : Amitava Roy, C.J.;Veerendr Singh Siradhana, J

Bench : Division Bench

Advocate : Yash Sharma, for the Appellant; Ishwar Jain for the Respondent-Municipal Board, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, C.J.—Distressed by the order dated 19.11.2012 passed on an application filed by him u/s 17B of the Industrial Disputes Act, 1947 (for short hereafter referred to as "the Act") in S.B. Civil Writ Petition No. 5743/1999, limiting his entitlements from the date of filing thereof (application u/s 17B), the respondent-workman is in appeal. We have heard Mr. Yash Sharma, learned counsel for the appellant and Mr. Ishwar Jain, learned counsel for the respondent herein.

2. The skeletal facts necessary for the disposal of the instant appeal are that the appellant had been appointed with the Municipal Board, Bhushawar on compassionate ground on 12.1.1987. His services having been terminated with effect from 19.4.1987, he raised an industrial dispute, which was eventually referred to the learned Industrial Tribunal, Bharatpur for adjudication. The learned Tribunal, vide its award dated 4.8.1999, holding the termination of the appellant to be illegal, ordered his reinstatement with all consequential benefits, including back wages. Being aggrieved, the respondent herein approached this Court with S.B. Civil Writ Petition No. 5743/1999 seeking the annulment thereof. On 1.11.1999, notices were issued by this Court, and eventually, by order dated 10.8.2001, operation of the award was kept in abeyance.

3. The appellant herein (respondent No. 1 in the writ petition) belatedly filed the application u/s 17B of the Act on 12.7.2012 seeking payment of wages as well as other admissible allowances during the pendency of the writ proceedings. The respondent-Board refuted the claim mainly on the ground of enormous delay in registering the claim. By the impugned order, the learned Single Judge though has not declined the relief sought for under the above provision of the Act, but has limited it from the date of the application. Hence, the instant appeal.

4. The learned counsel for the appellant, with emphatic reference to Section 17B of the Act, has urged that not only this provision is a piece of social beneficial legislation and ought to be construed accordingly, on a plain reading thereof as well, the relief contemplated therein is extendable to the workman for the entire period of pendency of any proceeding instituted by the employer before the High Court or the Supreme Court. Mr. Sharma has argued that as in the application u/s 17B and also in the additional pleadings laid in the instant appeal the appellant/workman has, in categorical terms, averred being affirmed by affidavit that he had not been employed in any establishment since the termination of his services, the learned Single Judge ought to have directed payment of full wages last drawn by him, inclusive of all allowances as envisaged in Section 17B of the Act from the date of institution of the writ petition. The learned counsel has insisted as well that as the writ petitioner/employer has failed to prove to the satisfaction of this Court that the appellant had been employed and had been receiving adequate remuneration during the period involved, the impugned order of limiting his entitlements only on the ground of delay from the date of his application, is erroneous. Mr. Sharma maintained that delay per se being not annihilative of the right of a workman to receive the benefits u/s 17B of the Act, if other pre-conditions are complied with, the impugned order, if allowed to stand, would result in grave injustice. To reinforce his arguments, Mr. Sharma placed reliance on the decisions of this Court in *Rajasthan State Road Transport Corporation v. Labour Court, Bikaner & Anr.*, (1998) ILLJ 831 *Bal Hit Shiksha Samiti Vs. Shri Dharam Singh and Another*, as well as of the Delhi High Court in *Delhi Transport Corporation v. Inderjeet Singh* (LPA No. 392 of 2008 d/d 29.7.2008).

5. Per contra Mr. Jain appearing for the respondent/employer has urged that the application u/s 17B having been filed by the appellant/workman after long 13 years of the award, the learned Single Judge was perfectly justified in granting the benefits from the date thereof, and thus, no interference therewith is called for. The learned counsel has urged that the relief u/s 17B of the Act having been contemplated to be of immediate succour to the needy workman, the inordinate delay, in the instant case, per se establishes that the appellant/workman had been gainfully employed during this period, and thus, he is not entitled to the benefits under this provision from the date of institution of the writ proceeding.

6. We have considered the pleadings pertaining to the issue involved as well as the arguments advanced.

7. Section 17B is extracted hereinbelow:--

17-B. Payment of full wages to workman pending proceedings in higher Courts.- Where in any case, a Labour Court, Tribunal, 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.

8. It would be apparent from the above extract that the essential pre-requisites for the invocation of this legal provision are:

1. A Labour Court, Tribunal or National Tribunal by its award has directed reinstatement of any workman.

2. The employer has preferred any proceeding against such award in a High Court or the Supreme Court.

3. The employer then shall be liable to pay such workman, during the period of pendency of such proceeding, full wages last drawn by him, inclusive of any maintenance allowance admissible to him in any rule.

4. Such liability would arise if the workman had not been employed in any establishment during such period and an affidavit by such workman has been filed to such effect in such Court.

5. In case 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, no wages shall be payable for such period or part, as the case may be.

9. In his application u/s 17B, the appellant/workman has categorically stated that he is out of employment and is facing hardship for sustaining himself and his family. That he has no source of livelihood, has been stated. In his additional pleadings filed in the instant appeal, it has been stated further that after the institution of the writ proceedings till date, he has been, in order to prevent himself and his family from starvation, engaging himself in different types of work in the market, such as, whitewashing, cleaning etc. According to him, being illiterate, he was not aware of the legal provision i.e. Section 17B of the Act, for which he did not file the application thereunder earlier. He has asserted that he

had done so, only on being advised by his learned counsel, when he contacted him to ascertain the status of his case.

10. In its reply, the employer-Board, to reiterate, has emphasized on the inordinate delay on the part of the appellant/workman in filing the application. It however, stated as well that he has been in gainful employment.

11. That there is a massive delay of 13 years in filing the application u/s 17B of the Act, is an undeniable fact. A perusal of the pronouncements in the decisions relied upon by the learned counsel for the appellant, demonstrate in unequivocal terms that Section 17B is a beneficial provision, so much so that delay per se ought not to defeat the reliefs envisaged therein.

12. In our comprehension, thus having regard to the underlying purpose and spirit of the provision, reliefs as contemplated thereunder ought to be extended, delay notwithstanding, subject however, to the compliance of the statutorily prescribed pre-conditions. In the reply filed by the employer-Board, except inordinate delay, nothing has been placed on record to enable this Court to derive satisfaction that from the date of the institution of the aforementioned writ proceeding, the appellant/workman had been employed and had been receiving adequate remuneration thus, disentitling him to the benefits otherwise extendable u/s 17B of the Act. On the other hand, the averments made in his application as well as the additional pleadings filed in the instant appeal and supported by affidavit, in our estimate, establish that he is not gainfully employed, as contemplated in the above legal provision, to be denied the benefit of the reliefs mandated thereby. Having regard to the nature of the provision and the underlying objectives thereof, we are thus, inclined to sustain the pleas raised on behalf of the appellant/workman. We therefore, hold that he is entitled to the benefit of Section 17B of the Act from the date of institution of the writ proceeding. Ordered accordingly. The impugned judgment and order is modified to the extent indicated hereinabove. The appeal is allowed. The Respondent-Board would take follow up steps immediately for compliance.