
(1996) 12 P&H CK 0064
In the Punjab And Haryana At Chandigarh
Case No : L.P.O. No. 736 of 1986

State of Punjab

APPELLANT

Vs

Baru Ram

RESPONDENT

Date of Decision : 11-12-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (1997) 3 LLJ 833 : (1997) 115 PLR 680

Hon'ble Judges : Sreedharan, C.J;V.K. Jhanji, J

Bench : Division Bench

Advocate : S.S. Shergill, for the Appellant;

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This Letter Patent Appeal has been directed against order dated September 30, 1986 passed in Civil Misc. No. 2536 of 1986, C.M. No. 935 of 1986 in C.W.P. No. 698 of 1985.

2. According to the statement of Claim put by the respondent before the Labour Court, he was engaged as a casual labourer in the Zoological Park, Chhatbir and was drawing Rs. 310/- per month by way of wages, when his services were wrongly terminated on August 16, 1982. He claimed reinstatement with continuity of services and full back wages. The Presiding Officer, Labour Court, Patiala by his award dated September 13, 1983 held that the respondent was entitled to reinstatement with continuity of service and that he shall be entitled to full back wages. State of Punjab challenged the award of the Labour Court in Civil Writ Petition of 698 of 1986 which is pending decision. During the pendency of the writ petition, respondent filed C.M. No. 2536 of 1986 praying therein that he be paid arrears of wages which were being paid to the regular employees, with interest. The said application was allowed by the learned Single judge vide order dated September 13, 1986 and while allowing the application the State of Punjab was directed to pay to the respondent the arrears at the same rate which was being paid to the next below junior. In this appeal, the order of the learned

Single Judge is being impugned on the ground that during the pendency of the writ petition the respondent is not entitled to payment of wages at the same rate like other workmen who are actually working in the department, but is entitled to payment of wages only at the rate last drawn by him.

3. On hearing counsel for the appellant we are of the view that the respondent is entitled to the payment of wages at the rate at which he was being paid immediately before termination of his services. The payment of wages to a workman pending proceedings in High Court is governed by the provisions of Section 17B of the Industrial Disputes Act. It reads as under:-

"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."

It is apparent from a perusal of Section 17B of the said Act that pending disposal of a proceeding in the High Court or the Supreme Court against the award the employee is entitled to full wages last drawn by him inclusive of any maintenance allowance admissible to him under any rule, so long as the worker is not employed elsewhere. The question as to whether the workman is entitled to current wages or is entitled to payment of wages at the rate last drawn by him, was considered by a Division Bench of this Court in Daladdi Cooperative Agril. Service Society Ltd. Vs. Shri Gurcharan Singh and Another, . The question was answered by the Division Bench by saying that the workman who has not been reinstated is entitled to payment of wages only at the rate last drawn by him and not at the same rate at which wages are being paid to the workmen who are actually working. In para 10 of the judgment, the Division Bench observed : " A person who is actually working and performing his duties is differently placed from a person who is being paid without performing any duty. The two are not similarly situated. Consequently, the two persons can be treated differently. It is not difficult to visualise that a workman may have been dismissed after serious charges had been proved against him. The management may not be inclined to reinstate him in spite of the award having been passed by the competent Court or Tribunal. If it challenges the order in the High Court or in the Supreme Court, the workman may not be reinstated during the pendency of the proceedings. In such a situation, the legislature has provided that he must be paid atleast the

wages which he was drawing immediately before his dismissal from service. This would enable the workman to subsist. It is fair and equitable. The workman is paid to enable him to subsist without having to work and the management is able to avoid reinstatement till the decision of the case." We find no reason to take a different view than that has been taken by the Division Bench in Daladdi Co-operative Agril. Service Society's case (supra).

4. Accordingly, this appeal is allowed. Order of the learned Single Judge rendered in Civil Writ Petition No. 698 of 1986 is set aside and we hold that the respondent in this appeal shall be entitled to payment of wages at the rate at which he was being paid immediately prior to termination of his services. No costs.