

(2004) 06 GUJ CK 0001

In the Gujarat High Court

Case No : C.A. No. 5112 of 2003 in S.C.A. No. 8141 of 2001 and C.A. No. 5114 of 2003

Sureshkumar Ramshakal Pandey

APPELLANT

Vs

Municipal Commissioner

RESPONDENT

Date of Decision : 18-06-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2004) 102 FLR 1169 : (2004) 3 LLJ 798

Hon'ble Judges : Ravi R. Tripathi, J;R.K. Abichandani, J;D.H. Waghela, J

Bench : Full Bench

Advocate : D.T. Shah, for the Appellant; Nilesh A. Pandya, for the Respondent

Judgement

D.H. Waghela, J.—This reference came up before this larger Bench by the order dated March 11, 2004 on account of the difference perceived between the judgment of the Supreme Court in AIR 1998 511 (SC) and the two judgments of the Division Bench of this Court. The issue arose out of the interpretation and application of Section 17-B of the Industrial Disputes Act, 1947 (the "Act" for short).

2. The contention on behalf of the workmen was that, as decided by this Court in Letters Patent Appeal No. 358 of 2002 and Letters Patent Appeal No. 1319 of 2003, the workman was entitled to, during pendency of the proceedings against an award of reinstatement, wages, as were payable to the workman as the minimum wages. This view was sought to be supported by the aforesaid judgment of this Court in Letters Patent Appeal No. 358 of 2002, wherein the judgment of the Supreme Court in Dena Bank (supra) was not referred and the order to pay minimum wages was made on the proposition that the ends of justice would be satisfied if the direction was given to pay the last wages which should not, in any case, be less than the minimum wages in respect of the period from the date of the award till the date of reinstatement. The latter judgment in Letters Patent Appeal No. 1319 of 2003 relied upon the aforesaid earlier

judgment and held that when the payment u/s 17-B of the Act was to be made, the worker was entitled to minimum wages. Thus, in short, the said judgments are rendered without reference to the judgment of the Supreme Court in Dena Bank (supra).

3. The Supreme Court has, in Dena Bank (supra), categorically held that as regards the wages, the Parliament has used the words "full wages last drawn" indicating that the wages that were actually-paid and not the amount that would be payable, are required to be paid. It is also clarified that the conferment of right u/s 17-B of the Act cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution. In view of the above clear and categorical interpretation rendered by the Supreme Court, the learned counsel for the workmen fairly conceded that the workman cannot, as a matter of statutory right under the provisions of Section 17-B of the Act, claim the relief of the last drawn wages at the rates at which the wages were payable to the workman at the time of termination of his service. In fact, by virtue of the provisions of Section 17-B, the liability to pay the last drawn wages during the pendency of the proceedings before the higher Court is imposed upon the employer subject to fulfilment of several conditions and that liability is beyond the pale of controversy and discretion. At the same time, as held by the Supreme Court in Dena Bank (supra), the discretion of the High Court to grant higher benefits as a condition for the grant of interim relief is not taken away.

4. In view of the above clear position of law, the view taken in the aforesaid judgments of this Court in Letters Patent Appeal No. 358 of 2002 and Letters Patent Appeal No. 1319 of 2003, to the extent and to the effect that the workman is, u/s 17-B of the Act, entitled to minimum wages payable at the time of termination or afterwards, is inconsistent with the ratio of the Supreme Court judgment in Dena Bank (supra) and, therefore, held to be not good law. The reference stands answered accordingly.

5. The applications shall be placed before the learned single Judge concerned for final decision in accordance with law.