

**(2011) 01 GUJ CK 0037**  
**In the Gujarat High Court**

**Case No :** Civil Application - for Direction No. 15964 of 2010 in Special Civil Application No. 16635 of 2003 and Special Civil Application No. 16635 of 2003

Zubedaben A. Barot

APPELLANT

Vs

State of Gujarat

RESPONDENT

**Date of Decision :** 31-01-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 17B

**Citation :** (2011) 01 GUJ CK 0037

**Hon'ble Judges :** S.R. Brahmbhatt, J

**Bench :** Single Bench

**Advocate :** Rajesh P. Mankad, for the Appellant; Moxa Thakkar, AGP, for the Respondent

## **Judgement**

S.R. Brahmbhatt. J.

1. Rule. Ms. Moxa Thakkar, learned AGP waives service of notice of Rule on behalf of Respondent. By consent Rule is fixed forthwith.

2. The applicant has taken out this Civil Application for direction as well as the main petition have been taken up together as there were serious grievances made by the applicant in Civil Application that despite there being clear orders calling upon the employer Petitioner in main petition to comply with the order of making payment of last drawn wages u/s 17B of the Industrial Disputes Act, 1947, no effective steps have been taken. Only Rs. 9000/- is paid from April, 2003 to June, 2004 and that too on 7.1.2006. Thereafter, repeated requests of the applicant as well as orders of this Court have been not heeded to and hence, a request for appropriate order was made.

3. The applicant happens to be Respondent workman in main matter being Special Civil Application No. 16635 of 2003 had to move the Court raising industrial dispute above referred being Reference (LCV) No. 1050 of 1999, which

came to be allowed by the competent court and the Petitioner employer was ordered to reinstate the applicant workman with full back wages and Rs. 500/- towards costs. This award was made on 5.3.1997. Thereafter, matter was reopened and after hearing both the sides, the Court passed an award where under, the order of reinstatement was made and amount of back wages was reduced to 50% and costs of Rs. 2000/- was awarded.

4. Being aggrieved and dissatisfied with the said order, the original Petitioner has preferred Special Civil Application No. 16635 of 2003. The said petition has been admitted by this Court (Coram: Ravi R. Tripathi, J.) vide order dated 10.12.2003. The ad-interim relief in terms of para-6(c) came to be granted. The said ad-interim relief granted earlier, came to be continued till further orders by this Court (Coram: Jayant Patel, J.) on 5.2.2004, however, while confirming interim relief, the Court observed that the confirmation of the interim relief shall be without prejudice to the rights and contentions of the workman for invoking provisions of Section 17B of the Industrial Disputes Act, 1947, if otherwise available under the law. The requisite affidavit came to be filed by the workman on 19.2.2004 indicating that she is not gainfully employed anywhere and hence be paid last drawn wages u/s 17B of the I.D. Act. The communication addressed on page-13 indicates that affidavit was submitted to the concerned authority.

5. As stated hereinabove, the authority made one payment of Rs. 9000/- for the period from April, 2003 to June, 2004 and that too on 7.1.2006. Thereafter no money was paid towards Section 17B compliance. The grievance were made by the workman on 9.8.2010 and Court passed the following order:

The learned Counsel for the Respondent states that after giving 10 month's salary, the Respondent has not been granted the benefits u/s 17(B). The Petitioner " State is to verify the aforesaid statement and if the said amount is not paid, the Petitioner will make payment up till 31st July, 2010 to the Respondent, failing which necessary orders will be passed.

6. Again on 23.8.2010, court was constrained to pass the following order:

This Court on 09.08.2010 has passed the following order:

The learned Counsel for the Respondent states that after giving 10 month's salary, the Respondent has not been granted the benefit u/s 17(B). The Petitioner-State is to verify the aforesaid statement and if the said amount it not paid, the Petitioner will make payment till 31st July 2010 to the Respondent, failing which, necessary orders will be passed.

The learned Assistant Government Pleader has not received any instruction. In view of that, matter is adjourned to 06.09.2010.

It is made clear that by next date of hearing, if the amount of benefit u/s 17(B) will not be paid, the Petitioner- Manager, Aadarsha Nivasi Sala, Post. Chhota Udepur, Dist. Vadodara will remain present before this Court on the next date of hearing.

Direct service to both sides is permitted.

7. Thus, the money was not paid and hence the workman was constrained to take out present application for appropriate direction. It transpires that affidavit was challenged in the main matter contending that the workman had attained the age of superannuation relying upon the voters' list dated 1.1.2002, wherein, it was shown that her age at relevant time was 67 years. The matter ended there. The authority chose to rely upon this document and considered that workman had attained the age of superannuation and absolved itself of obligation of paying 17B wages, which were available and admissible to the workman under the provisions of law.

8. At this stage, Mr. Mankad, learned advocate for the applicant drawn attention of the Court to document at Annexure " P at page-26 of the compilation, which is purported to be a certificate issued by Medical Officer, S.S.G. Hospital, Vadodara, wherein, the applicant's age is shown to be 50 to 55 years on the basis of radiological examination. This examination was undertaken by the applicant on her own volition with a view to justify that she has not attained the age of superannuation and she is entitled to get the benefits of payment u/s 17B of the I.D. Act as ordered, as on the basis of voter list, original Petitioner employer has not paid any wages to the workman and has not bothered to obtain any order from the court on the strength of said document.

9. This Court is of the considered view that even assuming for the sake of examining the statement that the applicant had attained the age of superannuation and she was not entitled to be paid any wages on the strength of superannuation in view of voters list, then also, it was not open to the employer Respondent herein in this Civil Application to stop of its own accord the payment, as there was a specific order of the Court and therefore, the employer was under an obligation to move this Court with appropriate application bringing such facts to the notice of the Court as to obtain order for dis-entitling her for receiving the payment of 17B wages. Unfortunately, the employer opponent in this Civil Application has chosen not to pay the 17B wages and stop unto itself by stopping payment relying upon the document, copy whereof is not subjected to the scrutiny of the court nor was it put to either side in any manner.

10. Learned advocate appearing for the employer Respondent at this stage submitted that let the lady applicant be sent for appropriate medical examination for ascertaining her correct age.

11. In my view, this examination would be in futility, as such a request can not be accepted unless there is a challenge to the certificate produced by the applicant referred hereinabove and produced at Page-26 of the compilation.

12. Ms. Thakkar, learned AGP further contended that in absence of any appropriate evidence of age namely birth date certificate, school leaving certificate etc., medical certificate obtained from the hospital cannot be a sole document to rely upon to establish that she has not attained the age of

superannuation. This Court is unable to accept this submission as it is already adverted at length the inertia evinced by the employer, which almost is required to be characterized as culpable inertia in stopping the payment of wages without bothering the orders passed by this Court and without putting the voter list, which was relied upon by the employer for stopping the payment of 17B wages, at the scrutiny of the court.

13. The payment of Section 17B wages are statutorily required to be paid and thus the workman's statutory right supported by the order of this Court have blatantly been violated by the Respondent employer and hence, it is a case where the direction is required to be issued so as to meet with the ends of justice. In the instant case therefore, the employer-Petitioner in Special Civil Application No. 16635 of 2003 is hereby directed to make payment of last drawn wages to the applicant till 31.1.2011 and the interim relief granted earlier is in fact required to be vacated but in my view, as payment of Section 17B wages are statutory obligation cast upon the employer and if the employer makes any default therein, that it can well be said that the employer has committed serious default so as to dis-entitle it to continue with the proceedings under Article 226 of the Constitution of India. In the instant case, the Court has not opined on the merits of the main matter i.e. Special Civil Application No. 16635 of 2003, nor has the Court opined in respect of workman's age but has passed the aforesaid direction as the procedure, which was mandatory upon the employer has not been followed by the employer and employer had chosen to grant stay to itself and therefore, the direction for making payment u/s 17B of the ID Act is passed. The Court is of the view that as statutory obligation of making payment u/s 17B is not complied with and employer has not cared to obtain any specific order entitling them to absolve it from making payment, for the aforesaid default, the very petition is required to be dismissed for default and it is accordingly dismissed for non-prosecution. The Civil Application is disposed of with aforesaid direction. The main matter being Special Civil Application No. 16635 of 2003 is dismissed for want of prosecution. Rule discharged. Interim relief stands vacated. There shall be no order as to costs.

14. It is at this stage required to be noted that as the main matter is dismissed for want of prosecution as there is a default in making the payment of Section 17B wages, it would be open for the employer to move this Court with appropriate application for restoration of the main matter being Special Civil Application No. 16635 of 2003 only after complying with Section 17B of the ID Act in its totality meaning thereby, after making full payment towards Section 17B of the I.D. Act to the workman.