

Writ Petition No.14519/2012

11.7.2016.

Shri S.K. Rao, learned Senior Counsel with Shri S. Chaturvedi, learned counsel for petitioner.

Shri S.K. Gupta, learned counsel for respondent.

I.A. No.768/2014 filed by the petitioner are taken up for consideration. Vide this application, petitioner seeks direction to respondent-workman to deposit the amount paid towards backwages.

Petition is directed against an Award passed on 4.5.2012 by the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, directing reinstatement of the respondent-workman with backwages from the date of termination. The operation of impugned Award was stayed on 5.9.2012 subject to compliance of provisions under Section 17B of the Industrial Disputes Act, 1947 (for short '1947 Act'). The petitioner despite the said order paid an amount of Rs.3,82,554/- being the backwages vide Cheque No.ENG/G No.0357826 dated 24.4.2013 in compliance of Section 17B of 1947 Act. It is the refund of this amount which is being sought vide present application on the submissions that instead of paying the wages last drawn by the workman, entire backwages has been paid by misconstruing the provisions of Section 17B of 1947 Act

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and a wrong advice given by the counsel conducting the case.

Respondent-workman has opposed the application.

Considered rival submissions.

Question is whether the provisions contained under Section 17B of 1947 Act prohibits the employer from part compliance of the Award. And, with the part compliance, the workman if still is unemployed, can the employer abdicate from paying the last wages drawn.

Section 17B of 1947 Act mandates :

“17B. 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

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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.”

Fair reading of the provisions makes it ample clear that merely with the institution of proceedings in the High Court or the Supreme Court, as the case may be, by the employer, entails the liability to pay wages last drawn by the workman, in case other conditions mentioned therein are meted out i.e. the workman is not gainfully employed and an affidavit to that effect is filed.

The provisions of Section 17B of 1947 Act creates no bar for whole or partial compliance of the Award. In case the Award is of reinstatement with backwages, the employer can reinstate the workman and seek stay of money part. In that event, if the workman is reinstated, he will be entitled for current wages. In case where the employer tenders the entire backwages, as in the present case, he will be liable to pay the wages last drawn subject to fulfillment of other conditions therein. Thus, there being no statutory bar of partial compliance of the Award, no direction can be given to the respondent to refund entire

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amount paid towards backwages, nor can there be direction to adjust the amount towards last wages drawn to be paid during pendency of writ petition. The petitioner, in case if he succeeds in the petition, would be at liberty to recover the amount by taking recourse to law.

I.A. No.768/2014 is disposed of finally in above terms.

In view of this order, no order is warranted on I.A. No.525/2015.

List the matter for final hearing under the caption 'High Court Expedited Cases'.

Record of CGIT-cum-Labour Court be requisitioned.

(SANJAY YADAV)
JUDGE

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