

HIGH COURT OF MADHYA PRADESH, JABALPUR

Writ Appeal No.661 of 2015

Durjan Ahirwar

Versus

State of M.P. & another

Writ Appeal No.662 of 2015

Shri Ram Yadav

Versus

State of M.P. & another

**Present : Hon. Shri Justice Rajendra Menon
Hon. Shri Justice S.K.Seth**

Shri Vijay Tripathi, counsel for appellant.

Shri Pushpendra Yadav, G.A., for respondents

Whether approved for reporting:

Yes/No.

ORDER
(7.9.2015)

As common question of law and facts are involved in both the appeals, they are being disposed of by this common order.

2. Appellants were employed in the Higher Educational Department of the State Government and their services were terminated. This resulted in a dispute being raised under the Industrial Disputes Act, 1947 and on failure of conciliation the matter was referred for adjudication to a Labour Court. The Labour Court passed an award, held the termination to be illegal and directed for reinstatement of the appellants with 25% back wages.

3. Challenging the awards, the writ petitions filed by the State Government are pending before the learned writ Court. During the pendency of the writ petitions in compliance to the provision of section 17-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act' for short) the departmental authority started paying to the appellants full wages last drawn by them in accordance with the stipulations contained in section 17-B of the Act. Inter alia contending that the appellants have been reinstated in service and as they are discharging their duties regularly they are entitled to current wages of the post on which they are working and payment of full wages last drawn is not proper, interlocutory applications seeking current wages were filed, the same having been rejected by the impugned order by the writ Court, these appeals under section 2(1) of the M.P.Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal), Adhinyam, 2005.

4. A preliminary objection is raised by Shri Pushpendra Yadav, learned G.A., to say that against an interlocutory order passed in a pending petition, a writ appeal is not

maintainable, however Shri Vijay Tripathi, learned counsel for appellant invited our attention to a Full Bench judgment of this Court in the case of **Arvind Kumar Jain and others Vs. State of Madhya Pradesh and others** [2007 (3) MPHT 376 (FB)] to say that if the orders passed, even though interlocutory in nature decides a issue or question finally or affects a vital and valuable rights which may cause injustice to a person, the same is not an interlocutory order, but a final order with regard to that question and against such an order the writ appeal is maintainable. In the present case, even though the order is interlocutory in nature, but the order finally decides the issue with regard to entitlement of the petitioners to get salary for the work they are discharging on their reinstatement, pending adjudication of the writ petition. That being so, it is in the nature of a final order and in view of the law laid down in the case of **Arvind Kumar Jain** (supra), we are not inclined to uphold the preliminary objection. The preliminary objection raised by the Government Advocate is rejected.

5. The question warranting consideration is as to whether the appellants are entitled to current wages as claimed for in the interlocutory applications or they are only entitled to full wages last drawn as stipulated under section 17-B of the Act.

The learned writ Court has taken note of the judgment rendered by the Supreme Court in the case of **Dena Bank Vs. Kiritikumar T. Patel** [(1992) 2 SCC 106] followed in the case of **Rajaram Maize Products Vs. Brij Lal and another** [(1999) 9 SCC 64] and has rejected the application.

6. In the case of **Kiritikumar T. Patel** (supra) the question was with regard to interpretation of words “**full wages last drawn**” occurring in section 17-B of the Act and its meaning. Hon’ble the Supreme Court took note of the principles governing section 17-B of the Act, the aims and objects for which the provision was incorporated and held that words “**full wages last drawn**” occurring in section 17-B of the Act means the wages last drawn by the employee/workman at the time of his termination and would not include the current wages or the increase in the wages due to revision of salary, increments etc. It would only mean the wages drawn at the time of termination. However it may be taken note of that in the case of **Kiritikumar T. Patel** (supra) during the pendency of matter before the High Court the workman concerned was not reinstated in service, but in lieu of reinstatement he was only granted the benefit of section 17-B by paying to him the full wages last drawn and when the benefit of revision of pay with increment was not granted the dispute arose. While interpreting the provision of section 17-B of the Act, the Hon’ble Supreme Court in the aforesaid case in para 21 & 23 found that section 17-B of the Act has been enacted by the Parliament with a view to give some relief to a workman, who is ordered to be reinstated under the award of Labour Court or Industrial Tribunal during the pendency of the proceedings when the award is under challenge before the High Court or the Supreme Court. It was found that the principles underlying for enactment of the provision was to relieve to certain extent the hardship caused to the workman due to the delay in implementing an award passed by the Labour Court or the Industrial Tribunal, as the

case may be and it was found that payment which was to be made under section 17-B of the Act, was in the nature of subsistence allowance which could not be recovered or refundable from the workman, even if the award is set aside by the High Court or Supreme Court. As this was the nature and character of the amount paid, it was found that the Parliament thought it appropriate to extend the relief of last wages drawn when his services were terminated and therefore after taking note of the aforesaid objection the expression "**full wages last drawn**" was held to mean the wages which would have been drawn by the workman at the time of termination and not the wages which would have been drawn if he would have continued in service had the order of termination not passed.

7. After holding so and disagreeing with the observation made by certain High Courts in this regard in para 23 the Hon'ble Supreme Court further holds that inspite of the provisions as contained in section 17-B of the Act and the provisions conferring right to the workman for payment of full wages last drawn, the power of the High Court and Supreme Court under Article 226 and 136 of the Constitution of India are not curtailed or reduced. It was held that inspite of provision of section 17-B of the Act, the same does not in any way precluded the High Court or the Supreme Court to pass an order directing payment of higher amount to the workman if such higher amount is considered necessary in the interest of justice. It was held that such a direction would be de hors the provision contained in section 17-B of the Act within the powers of the High Court or Supreme

Court under Article 226 and 136 of the Constitution, we may reproduce the observations made by the Supreme Court in this regard :

"23. As regards the powers of the High Court and the Supreme Court under Articles 226 and 136 of the Constitution, it may be stated that Section 17-B, by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceeding involving challenge to the award of the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of the award being set aside, does not in any way preclude the High Court or the Supreme Court to pass an order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a direction would be de hors the provisions contained in Section 17-B and while giving the direction, the court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside."

(Emphasis supplied)

Thereafter while concluding in para 24 the Supreme Court made the following observations :

"The said direction of the learned Single Judge, which has been upheld by the Division Bench of the High Court in the impugned judgment, cannot be upheld since it amounts to directing payment of wages which would have been drawn by the respondent if he had been reinstated and not the full wages last drawn by him."

(Emphasis supplied)

It is therefore clear from the aforesaid observation of Supreme Court that the provision of section 17-B of the Act is intended to be used for the purpose of granting subsistence allowance to the employee who inspite of award of

reinstatement passed is unable to reap the benefit of reinstatement and is kept out of service. This is more clear, if we go through the provision of section 17-B of the Act, which contemplates that the workman should file an affidavit showing that he was not in gainful employment and was not earning the wages during the pendency of proceedings before the High Court or Supreme Court, therefore the workman is entitled to receive the benefit under section 17-B of the Act only if he is unemployed and not earning any wages or remuneration or is not gainfully employed when the challenge to the award is pending.

8. The judgment of **Kiritikumar T. Patel** (supra) was again considered by the Supreme Court in the case of **Dena Bank Vs. Ghanshyam** [(2001) 5 SCC 169] and therein also the aims and object and provision of section 17-B of the Act was considered and similar principle is laid down, however in the case of **Ghanshyam** (supra) it was found that the High Court in the order impugned before the Supreme Court had directed for reinstatement of the employee in pursuance to the award while passing an interim order of stay with regard to payment of back wages and in the event of employee not being reinstated directed for paying the full salary for the post in which he would have been reinstated, the Supreme Court took note of the powers available to the High Court under Article 226 of the Constitution, as observed in the case of **Kiritikumar T. Patel** (supra) and held that the Court may depending on the fact of the case direct payment for full wages last drawn under section 17-B of the Act or may pass such order as it may deem appropriate, interlocutory in

nature exercising its jurisdiction under Article 226 of the Constitution and after taking note of the stay order granted by the High Court in para 11 observed as under :-

"A plain reading of this order shows that the High Court stayed the award of the Labour Court on condition of the appellant reinstating the respondent in the service and paying him salary regularly in accordance with law. It needs no debate to conclude that on reinstatement the respondent will be entitled to his salary on a par with other employees working in the same post and it is in that meaning that the said clause "and is paid his salary regularly in accordance with law", has to be understood."

(Emphasis supplied)

9. From the aforesaid observation, it is clear that the High Court was empowered to direct for reinstatement of workman and pay him regular salary in accordance with law and it has been observed by the Supreme Court that it needs no debate to conclude that on reinstatement the workman may be entitled to his salary at par with other employee working on the same post and paid salary regularly in accordance with law. If we read the two judgments of the Supreme Court in the case of **Kiritikumar T. Patel** and **Ghanshyam** (supra), we find that when an award is passed directing reinstatement of a workman and when such an award is challenged in the High Court or Supreme Court in case the employee/workman is not reinstated and he is not gainfully employed anywhere and if he files an affidavit in this regard, he is entitled to payment of last wages drawn, in accordance with section 17-B of the Act, however inspite of aforesaid the High Court exercising jurisdiction under Article 226 and Supreme Court exercising jurisdiction under Article 136 of the Constitution can pass such orders as may be in

the interest of justice depending under the facts and circumstances of the case and in case by virtue of order passed by the High Court or Supreme Court or even if the employer on his own reinstate the employee, takes work from him and the employee is discharging his duties alongwith other employees then the employer is duty bound to pay salary at par with other employees, in such a case the workman or the employee is not to be paid the last wages drawn under section 17-B of the Act, but actual wages for the work he is discharging. A complete reading of section 17-B of the Act and law laid down by the Supreme Court as discussed herein clearly indicates that the question of granting benefit under section 17-B and the last wages drawn will not arise where during the pendency of the matter before the High Court or Supreme Court the employee/workman is reinstated and discharges duties, then he is entitled to current salary at par with other employees as this is the requirement of law and also on the principle of equal work for equal wages. That apart, this is also the principle laid by the Coordinate Bench of this Court in the case of **M.P.State Co-operative Marketing Federation Ltd., Vs. Presiding Officer, Labour Court, Raipur and another** [(1992) 64 FLR 741 (MP)]. In the said case in para 3, 4 & 5 the following directions were issued :-

"3. It is however, difficult to agree with petitioner's contention that this Court has no jurisdiction to grant an ad-interim relief prayed for in the above said Interlocutory application. The provision of Section 17-B I.D.Act, cannot causes the plenary powers of this Court to grant any ad-interim relief necessitated by the circumstances of the case and warranted in the ends of justice. This Court's direction of stay of the impugned award did not oblige the petitioner

to reinstate the respondent no.2. The reinstatement has been done by the petitioner voluntarily. Had the petitioner not reinstated respondent No.2 the latter would have had the choice to take employment elsewhere and in that case the petitioner would have been absolved of its liability to pay him wages under Section 17-B I.D.Act. Therefore, when the petitioner has on his own reinstated respondent No.2 and is taking full work from him the argument that it's liability for payment of wages to respondent no.2 at the current rates minus payment already made will arise only after the final decision in this petition cannot be accepted. There appears to be no justifiable reasons why the payment of full wages to respondent No.2 should be allowed to remain in abeyance till the final decision of this petition. The petitioner's liabilities to pay respondent No.2 wages at the current rate for the period after his reinstatement remains unaltered whether the petition succeeds or is dismissed. When this is the case, there can be no reasonable cause to permit postponement of such payment till disposal of this petition.

4. Provision of Section 17-B of the Act is attracted only if the award of reinstatement pending consideration in the High Court or the Supreme Court is not eliminated by the employer and can, as is clear from its terms not applicable when the employee is reinstated by the employer pending proceeding against the award.

5. In result, I.A.No.6909/90 is allowed. The petitioner is directed to pay to respondent No.2 the current wages from the date of his reinstatement in service."

(Emphasis supplied)

10. In this case also the employee/workman was reinstated and as he was discharging the duty the directions issued was to pay him wages at current rate on his reinstatement. That being the legal position, we are unable to uphold the order passed by the learned writ Court, to say that in view of the judgment rendered by the Supreme Court in the case of **Kiritikumar T. Patel** (supra), the appellants

are only entitled to last wages drawn, we hold that in case appellants are reinstated and are discharging duties, they are entitled to be paid the current wages. Therefore the matter is remanded back to the learned writ Court to consider as to whether the employees/workmen have been reinstated, are still working and if so they be paid the current wages. We find from the record that even though appellants have come out with a case that they have been reinstated, but the respondents have not given any specific reply to the same and therefore we deem it appropriate to leave it to the learned writ Court to decide this aspect of the matter.

11. The principle governing the grant of benefit i.e. full wages last drawn under section 17-B of the Act will apply only when during the pendency of the matter before the High Court or Supreme Court the employee or the workman is not reinstated and therefore by way of subsistence allowance he is granted the full wages last drawn. However, in case where by virtue of any interim direction passed by the High Court or the Supreme Court or the employer on his own thought it appropriate to take work from the workman concerned and therefore reinstated him, the concept of last wages drawn under section 17-B of the Act will not apply. In such a case where the employee is reinstated and is discharging the duty and the employer is taking work and taking benefit of the labour put in by the employee, which is consequently used for the benefit of the employer for his business or for the advantage of the establishment, the employer has to pay wages as prescribed under the law for the work which the employee or the workman is discharging on reinstatement.

In such a case after taking work from the employee, the employer cannot say that he will pay something less to the employee than his entitlement, this cannot be permitted. It would amount to violation of provisions of law laid down under the Minimum Wages Act, rules and regulation governing contract of service, and right of a person to receive wages prescribed for the work he is discharging and therefore in cases where the employee is reinstated in service pending finalization of the dispute by the High Court or the Supreme Court, as the case may be, the workman/employee would be entitled to current wages of the post and not last wages drawn as permissible under section 17-B of the Act.

12. With the aforesaid, these appeals stand allowed and disposed of.

(RAJENDRA MENON)
JUDGE

(S.K.SETH)
JUDGE

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