

**HIGH COURT OF MADHYA PRADESH : AT JABALPUR**

**Writ Appeal No : 227 of 2016**

State Bank of India

- V/s -

Tarun Kumar Pradhan and another.

**Present :**           **Hon'ble Shri Justice Rajendra Menon,**  
                                  **Acting Chief justice; and,**  
                                  **Hon'ble Shri Justice Anurag Shrivastava.**

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Shri A.P. Shroti, counsel for the petitioner.

Shri S.K. Singh, counsel for the respondent No.1.

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**Whether approved for reporting:**

**Yes / No.**

**JUDGMENT**  
**24/08/2016**

Appellant Bank had filed the writ petition challenging an award passed by the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur on an industrial dispute referred to it for adjudication. The Tribunal by the award in question had granted benefit of reinstatement with 40% backwages to respondent No.1/workman and during the pendency of the writ petition an application was filed seeking grant of benefit as per Section 17-B, of the Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act'). The application under section 17-B was allowed by the writ Court and it was held that as it is a statutory liability of the employer to pay last wages drawn during the pendency of the proceedings, irrespective of the fact as to whether the workman has attained the age of superannuation or not, the application has been allowed.

**Writ Appeal No :: 227 / 2016.** State Bank of India Vs. Tarun Kumar Pradhan and anr

2- Shri Ashish Shroti, learned counsel for the appellant/Bank, inviting our attention to the provisions of section 17-B of the ID Act, submits that this provision contemplates payment of full wages to the workman when a proceeding challenging an award passed under the ID Act is pending in the High Court or the Supreme Court, as the case may be. Learned counsel argues that once a workman has attained the age of superannuation and the benefit of working is not available due to cessation of the contract of service on superannuation, question of reinstatement, or complying with the requirement of section 17-B does not arise. In support of his contention learned counsel invites our attention to a judgment of the Bombay High Court in the case of **Hind Rectifiers Limited Vs. Presiding Officer, 1<sup>st</sup> Labour Court, 2000 LawSuit (Bom) 676**; and, another judgment of the Gujarat High Court, in the case of **Essar Project Limited Vs. N.D. Jagdishwara, 2012 LawSuit (Guj) 187**. Both the judgments have been filed as Annexures A/5 and A/6. Another judgment of the Calcutta High Court in the case of **ICI India Limited and another Vs. Second Labour Court and another, 2009 LawSuit (Cal) 552**, has been filed in support of the aforesaid contention.

3- Learned counsel for the appellant argues that in view of the above once the workman had attained the age of superannuation, the question of complying with the provisions of Section 17-B will not arise, as wages are not payable to the workman in lieu of his reinstatement once he attains the age of superannuation and when the right to claim reinstatement ceases to exist, therefore, in such cases, there is no question of complying with the provisions of section 17-B.

4- Shri S.K. Singh, learned counsel appearing for the respondent/workman, refuted the aforesaid contention and argued that as the order in question is an interlocutory order and is an order passed exercising jurisdiction under Article 227 of the Constitution, the writ appeal is not maintainable.

5- Shri Shroti, learned counsel for the appellant, refuted the aforesaid contention and placed reliance on a Full Bench judgment of

**Writ Appeal No :: 227 / 2016.** State Bank of India Vs. Tarun Kumar Pradhan and anr

this Court in the case of **Jaidev Siddha (Dr) and others Vs. Jaiprakash Siddha and others, 2007 (3) MPLJ 595**, to say that writ appeal against an interlocutory order is maintainable under section 2(1) of the MP Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, as the order finally determines the issue for grant of benefit to the workman under section 17-B, and this being a final determination of this issue, the writ appeal is maintainable, as the order cannot be termed as an interlocutory order.

6- That apart, Shri Shroti argues that in deciding the issue with regard to complying with section 17-B, the learned writ Court has exercised its jurisdiction under Article 226; the learned writ Court has not interfered with any order passed by the Labour Court in exercise of its jurisdiction under Article 227, instead has exercised the original jurisdiction under Article 226 of the Constitution, in granting the benefit of Section 17-B, of the ID Act, therefore, the appeal is maintainable.

7- We have heard learned counsel for the parties and have perused the records.

8- As far as the preliminary objection raised with regard to maintainability of this writ appeal is concerned, we find no substance in the aforesaid objection.

9- A Full Bench of this Court in the case of **Jaidev Siddha** (supra) has held that in a writ petition, if the writ Court decides a question or an issue finally even though by an interlocutory order, a writ appeal is maintainable. That apart, the jurisdiction exercised by the writ Court in this case is not under Article 227 of the Constitution, it is an order passed for the first time by the writ court deciding the applicability of the provisions of section 17-B, and is not an order passed exercising jurisdiction under Article 227 of the Constitution with regard to interference with the award passed by the Labour Court. The jurisdiction for deciding the application under section 17-B has been exercised by the writ Court for the first time in a proceeding by the order under challenge and, therefore, as the power exercised by the learned writ Court is a power under Article 226 of the Constitution. Accordingly, we

**Writ Appeal No :: 227 / 2016.** State Bank of India Vs. Tarun Kumar Pradhan and anr

find no substance in the preliminary objection. The same is hereby rejected.

10- As far as merits of the contentions are concerned, section 17-B of the ID Act reads as under:-

**“17-B. 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 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.]”.

*(Emphasis supplied)*

11- A perusal of the aforesaid provision goes to show that in a case where the Labour Court, Tribunal or the National Tribunal passes an award directing reinstatement of a workman and against such an award of reinstatement, the employer prefers any proceeding in the High Court or the Supreme Court, the employer is liable to pay to the 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 the Rules, if the workman had not been employed in any establishment during the said period and an affidavit in support is filed.

12- The aim and object for incorporating section 17-B in the Industrial Disputes Act has been considered by the Supreme Court in the

**Writ Appeal No :: 227 / 2016.** State Bank of India Vs. Tarun Kumar Pradhan and anr

case of **Dena Bank Vs. Kiritikumar T. Patel, (1999) 2 SCC 106**, and it has been held that the provision was enacted by the Parliament with a view to give relief to a workman who has been ordered to be reinstated under the award of a Labour Court or an Industrial Court and during the pendency of the proceeding against such an award, which is under challenge before the High Court or the Supreme Court, the object underlying the provision is to relieve to a certain extent the hardship that is caused to a workman due to delay in implementing the award. The payment required to be made by the employer to the workman under this provision is in the nature of subsistence allowance, which is not refundable or recoverable from the workman even if the award is set aside by the High Court or the Supreme Court. It is to mitigate the hardship that is caused to a workman, who is prevented from reinstatement or reaping the benefit of the award because of pendency of challenge to the award.

13- It is, therefore, clear that when a proceeding challenging reinstatement is sub judice in a writ petition before the High Court then the workman is entitled to the benefit of last wages drawn during the pendency of the proceeding. Infact the wages provided under section 17-B is co-related to the relief of reinstatement granted to the workman, as it is only when there is an award for reinstatement of a workman that the provision of section 17-B comes into play. If there is no reinstatement ordered in an award, there is no question of complying with the provisions of section 17-B. That apart, if the workman pending adjudication of the matter before the High Court or the Supreme Court is reinstated as an interim measure by the employer, then he earns his actual wages and, therefore, in such cases also the compliance of section 17-B is not required.

14- That being so, the purpose of incorporating section 17-B is to give some subsistence allowance to the workman, who is already directed to be reinstated by the Labour Court, but during the pendency of the matter before the High Court or the Supreme Court, the employer

**Writ Appeal No :: 227 / 2016.** State Bank of India Vs. Tarun Kumar Pradhan and anr

does not reinstate him, therefore, in lieu of reinstatement during the pendency of the matter, the last wages drawn is given.

15- In that view of the matter, an award for reinstatement of the workman is a condition precedent to be fulfilled for the purpose of claiming the benefit of section 17-B and when an workman attains the age of superannuation, he cannot continue in service even if he is awarded reinstatement and, therefore, on attaining the age of superannuation, the workman has no right to continue in service as his reinstatement in such case is not possible and, therefore, once an workman has attained the age of superannuation, he cannot be entitled to the benefit of section 17-B. This aspect of the matter has been considered by the Bombay High Court in the case of **Hind rectifiers** (supra) and after following the judgment of the Madras High Court in the case of **Varadaraja Textiles (P) Limited Vs. Labour Court, 1999 (I) CLR 631**, it has been held that the word 'wages' appearing in section 17-B is relatable to employment and once the employment comes to an end on attaining the age of superannuation there cannot be any payment under section 17-B. It has been held that an workman may continue to get wages under section 17-B only so long as he continues to be employment as a workman, which obviously is only till his superannuation and once he superannuates, it is held that section 17-B will not be applicable.

16- That being so, if the aforesaid principle is applied in the present case, the direction by the learned writ Court to comply with the provisions of section 17-B by paying the last wages drawn has to be limited till the date on which the respondent workman attains the age of superannuation. He will only be entitled to the last wages drawn from the date of the award till attaining the age of superannuation and after attaining the age of superannuation, the provisions of section 17-B cannot be applied. This view taken by the Bombay High Court and the Madras High Court is also the view taken by the Calcutta High Court, in the case of **ICI India Limited** (supra), wherein if an workman had

**Writ Appeal No :: 227 / 2016.** State Bank of India Vs. Tarun Kumar Pradhan and anr

attained the age of superannuation, the learned court held that the benefit of section 17-B cannot be granted.

17- Similarly, the Gujarat High Court also, in the case of **Essar Project** (supra) has laid down the following principle:-

“As stated herein above, only in a case where there is an order passed by the Labour Court or Tribunal directing reinstatement and such an award is challenged in that case only, the workman would be entitled to the wages under [Section 17B](#) of the ID Act. Therefore, the wages as provided under [Section 17B](#) of the ID Act has a direct nexus with the reinstatement. The reinstatement of the workman in service can be only when the workman would be entitled to continue in service. On attaining the age of superannuation, the workman is not entitled to be continued in service therefore, there is no question of reinstatement in service of a workman after he has attained the age of superannuation. Under the circumstances, there is no question of making payment of wages as provided under [Section 17B](#) of the ID Act for the period after the workman has attained the age of superannuation. Considering the legislative intent it can be said that the wages under [Section 17B](#) of the ID Act are provided as such in lieu of the order of reinstatement as despite the order of reinstatement by the competent Industrial Adjudicator, under the guise of challenging the same before the High Court or the Supreme Court, the workman will be deprived of the reinstatement and the workman has not to suffer and he can survive if the wages under [section 17B](#) of the ID Act is provided. The contention on behalf of the opponent that irrespective of the fact that whether in the meantime the workman has attained the age of superannuation, the workman shall be entitled to wages under [Section 17B](#) of the ID Act till the proceedings are pending, cannot be accepted. ”

*(Emphasis supplied)*

18- From the aforesaid also, it is clear that the workman once he has attained the age of superannuation, will not be entitled to the benefit of section 17-B of the ID Act, in a pending proceeding.

19- Keeping in view the aforesaid principle laid down by various High Courts, which in our considered view lays down the correct principle, we allow this appeal in part. It is directed that the order passed

**Writ Appeal No :: 227 / 2016.** State Bank of India Vs. Tarun Kumar Pradhan and anr

by the learned writ Court on 26.4.2016, directing for payment of last wages drawn under section 17-B, shall be limited to the period from the date of passing of the award till the date the respondent workman attained the age of superannuation.

20- If the respondent/workman had attained superannuation, it shall not be incumbent upon the appellant/Bank to comply with the provisions of section 17-B, of the ID Act.

21- With the aforesaid observations, the writ appeal stands allowed in part and disposed of.

( RAJENDRA MENON )  
**ACTING CHIEF JUSTICE**

( ANURAG SHRIVASTAVA )  
**J U D G E**

Aks/-