

REGIONAL AUTHORITY, DENA BANK AND ANR.

v.
GHANSHYAM

MAY 8, 2001

[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

Labour Laws :

Industrial Disputes Act, 1947:

Section 17-B—Object and scope of—Award by Labour Court reinstating the workman—High Court staying the award in writ petition with direction to employer to pay regular pay scale to workman with effect from date of filing of writ petition—Contention by employer that workman entitled only to wages last drawn under Section 17-B—Tenability of—Held, in terms of the order of High Court, the salary which ought to be paid to workman could not be anything other than the salary which he would be entitled to on reinstatement—Question of payment of “full wages last drawn” not arising as High Court not granting relief in terms of Section 17-B—Section 17-B not precluding Courts from passing appropriate interlocutory orders having regard to the facts and circumstances of the case—However, in the interest of justice, employer held entitled to recover payment of amounts over and above the amount payable under Section 17-B in the event of his succeeding in the writ petition before High Court.

Respondent was engaged as a personal driver by Regional Manager of appellant Bank. At the end of tenure of the said Regional Manager, services of respondent were terminated, whereafter he raised an industrial dispute claiming to be a workman of appellant Bank. Labour Court passed an award ordering his reinstatement with back wages holding him a workman of the appellant Bank. Aforesaid award was assailed by appellant Bank in a writ petition before High Court. High Court stayed the award of Labour Court on condition of appellant Bank reinstating respondent in service and paying him salary regularly in accordance with law. Appellant Bank, however, did not reinstate respondent and filed an application for modification of the aforesaid order of High Court. Pursuant thereto, High Court modified its earlier order to the extent that appellant Bank shall pay salary to respondent regularly in accordance with law from the date of filing of writ petition; that

- A arrears of salary from date of filing of writ petition shall be paid within a period of seven days of the order and thereafter as and when salary was being paid to the other staff of the bank. On a complaint regarding non-compliance of this order, the case was again taken up by High Court which directed appellant Bank to pay regular pay scale to respondent with effect from date of filing of writ petition within one month of producing a certified copy of the order of Court. Against this order, present appeal has been filed.
- B

- On behalf of the appellant, it was contended that under Section 17-B of the Industrial Disputes Act, 1947, respondent was entitled to wages last drawn pending further proceedings in the High Court and therefore High Court was in error in directing payment of regular wages to the respondent.
- C

- On behalf of the respondent, it was contended that Section 17-B did not restrict the powers of the High Court in passing appropriate orders on the merits of the case; that the High Court stayed the award subject to appellant Bank reinstating respondent and paying him salary regularly in accordance with law which entitled him to receive full salary which was not contrary to Section 17-B of the Industrial Disputes Act.
- D

Allowing the appeal, the Court

- HELD : 1. By interim order the High Court did not grant relief in terms of Section 17-B of Industrial Disputes Act, nay, there is no reference to that Section in the orders of the High Court. Therefore, in this case the question of payment of "full wages last drawn" to the respondent does not arise. The High Court directed appellant to pay regular pay scale to respondent with effect from the date of filing of the writ petition within one month of producing a certified copy of the order of the Court. No exception can be taken to that order. Obviously, in terms of the order of the High Court, the salary which ought to be paid to respondent could not be anything other than the salary which he would be entitled to on reinstatement, *a fortiori*, he would also be entitled to the arrears at the same rate. However, while passing an interlocutory order the interests of the employer should not be lost sight of. Even though the amount paid by the employer under Section 17-B to the workman cannot be directed to be refunded in the event he loses the case in the writ petition, any amount over and above the sum payable under the said provision, has to be refunded by workman. Hence, in the present case if the appellant succeeds in the writ petition, it will be entitled to recover the difference of amount (i.e. amount paid under the impugned order less the amount payable under Section 17-B of the Act) from the respondent in
- E
- F
- G
- H

accordance with law. [598-D-H; A-B, F, H]

2. Section 17-B of the Industrial Disputes Act does not preclude the High Courts or Supreme Court under Articles 226 and 136 of the Constitution respectively from passing appropriate interlocutory orders, having regard to the facts and circumstances of the case, in the interests of justice. The court may, depending on the facts of a case, direct payment of full wages last drawn under Section 17-B of the Industrial Disputes Act only by the employer to the workman. The question whether a workman is entitled to the full wages last drawn or full salary which he would be entitled to in the event of reinstatement while the award is under challenge in the High Courts or Supreme Court depends upon the terms of the order passed by the Court, which has to be determined on interpretation of the order granting relief. [596-G-H; 597-A-B]

Dena Bank v. Kiritikumar T. Patel, [1999]2 SCC 106, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3731 of 2001.

From the Judgment and Order dated 4.5.2000 of the Allahabad High Court in W.P. No. 7548 of 1996.

P.P. Rao Sr. Advocate, Ramji Srinivasan, Ms. Geeta Nair, Navender Singh and Rajiv Mehta for the Appellants.

M.C. Dhingra for the Respondent.

The Judgment of the Court was delivered by

SYED SHAH MOHAMMED QUADRI, J. Leave is granted.

This appeal arises from the order of the High Court of Judicature at Allahabad, Lucknow Bench, in Writ Petition No. 7548(S/S) of 1996 dated May 4, 2000. The respondent who was engaged as a personal driver by the Regional Manager of the Dena Bank at Lucknow - the appellant, claimed to be a workman of the Dena Bank. At the end of the tenure of the incumbent Regional Manager of Dena Bank at Lucknow, the services of the respondent were terminated with effect from August 1990. He raised an industrial dispute under the Industrial Disputes Act, 1947 (for short, 'the Act') with regard to his retrenchment and eventually, on May 8, 1996, the Labour Court passed an award holding that the respondent was a driver of the Dena Bank; termination of his service was bad in law and ordered his reinstatement with back wages. The correctness of that award was assailed by the appellant in

A the aforesaid writ petition in the High Court. By the impugned order dated May 4, 2000, the High Court directed the appellant to pay regular pay-scale to the respondent with effect from December 6, 1996, within one month from the date of production of a certified copy of that order; failing which the appellant should appear before the court on July 4, 2000. That order is under challenge in this appeal.

B
C Mr. P.P. Rao, the learned senior counsel appearing for the appellant, has contended that under Section 17-B of the Act the respondent is entitled to the wages last drawn as interpreted by this Court in *Dena Bank v. Kiritikumar T. Patel*, [1999] 2 SCC 106 and, therefore, the High Court was in error in directing payment of regular wages to the respondent. He invited our attention to the order of this Court dated August 7, 2000 recording the statement of the counsel for the appellant that the pay last drawn by the respondent before termination of the services was Rs. 900 which was being paid as per Section 17-B of the Act pending further proceedings in the High Court and, therefore, the order under challenge deserves to be set aside.

D Mr. M.C. Dhingra, the learned counsel appearing for the respondent, has submitted that Section 17-B of the Act ensures that the minimum amount mentioned therein is paid to the workman during pendency of the proceedings in the High Courts or the Supreme Court but it does not restrict the powers of the High Court in passing appropriate orders on the merits of the case. In this case, submitted the learned counsel, the High Court stayed the award subject to the appellant reinstating the respondent and paying him salary regularly in accordance with law and that order was modified on February 17, 1997 which entitles him to receive full salary which is not contrary to Section 17-B, as such he is entitled to full salary under the orders of the High Court.
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F In support of his contention he has relied on paragraph 23 of the judgment in *Dena Bank's* case (supra).

The short question that arises for consideration is : whether the order of the High Court directing payment of regular salary payable on reinstatement as on the date of the order to the respondent, which is over and above full wages last drawn occurring in Section 17-B of the Act, is sustainable.
G

In a case where a workman is retrenched the relationship of master and servant comes to an end so thereafter the workman is not entitled to receive any emoluments from his employer. This principle is not disturbed by the provisions of the Act. However, the Act provides, *inter alia*, a machinery for
H a workman to raise an industrial dispute in regard to validity of his retrenchment

which will be adjudicated by Industrial Tribunal/Labour Court on reference under Section 10 of the Act. If a Tribunal/Labour Court holds the termination to be illegal, Section 11-A of the Act empowers it to set aside such order of discharge or dismissal, and direct reinstatement of the workman on terms and conditions as it thinks fit and to give such relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. When the award passed by the Labour Court is challenged in the High Court or the Supreme Court, the Court may, having regard to the facts and circumstances of the case, stay the award or pass such other interim order as it may deem fit.

Section 17-B which is inserted in the Act by the Industrial Disputes (Amendment) Act, 1982, reads as follows :

“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.”

Section 17-B provides that where the employer prefers any proceeding against an award directing reinstatement of any workman, 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

A Court. The proviso says that if the High Court or the Supreme Court is satisfied that the workman had been employed and had been receiving adequate remuneration during such period or part thereof, the Court shall order that no wages shall be payable under that section for such period or part, as the case may be.

B The Statement of objects and reasons for inserting the said provision indicates that when Labour Courts pass awards of reinstatement, they are often contested by employers in the Supreme Court and High Courts. To mitigate the hardship that would be caused due to delay in implementation of the award, it was proposed to provide for payment of wages last drawn

C by the workman concerned from the date of the award till the dispute between the parties is finally decided in the High Courts or the Supreme Court. It follows that in the event of an employer not reinstating the workman and not seeking any interim relief in respect of the award directing reinstatement of the workman or in a case where the court is not inclined to stay such award

D in toto the workman has two options either to initiate proceeding to enforce the award or be content with receiving the full wages last drawn by him without prejudice to the result of the proceedings preferred by the employer against the award till he is reinstated or proceedings are terminated in his favour, whichever is earlier. In *Dena Bank's* case (supra), this Court elucidated the expression "full wages last drawn" as follows :

E "The Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and therefore used the words "full wages last drawn."

F It may be noticed that Section 17B of the Act does not preclude the High Courts or this Court under Articles 226 and 136 of the Constitution respectively from passing appropriate interlocutory orders, having regard to the facts and circumstances of the case, in the interests of justice. [*Dena Bank's* case (supra)]. The High Court or this Court may, while entertaining

G employer's challenge to the award, in its discretion, in appropriate cases, stay the operation of the award in its entirety or in regard to back wages only or in regard to reinstatement without interfering with payment of back wages or on payment of wages in future irrespective of the result of the proceedings before it etc. and/or impose such conditions as to the payment of the salary as on the date of the order or a part of the back wages and its withdrawal

H by the workman as it may deem fit in the interests of justice. The court may,

depending on the facts of a case, direct payment of full wages last drawn under Section 17B of the Act only by the employer to the workman. The question whether a workman is entitled to the full wages last drawn or full salary which he would be entitled to in the event of reinstatement while the award is under challenge in the High Courts or this Court depends upon the terms of the order passed by the Court, which has to be determined on interpretation of the order granting relief. Turning to the facts of this case it is seen that on December 10, 1996, the High Court passed the following order:

“Sri Y.S. Lohit appearing on behalf of the opposite party no. 1 prays for and is allowed three weeks time for filing counter affidavit.

Issue notice to the opposite parties nos. 2 and 3.

In the meantime, Award of the Tribunal shall remain stayed *provided petitioner is reinstated in service and is paid his salary regularly in accordance with law.*

(emphasis supplied).

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 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. The appellant, however, did not reinstate the respondent but filed an application for modification of that order. The High Court modified the order on February 17, 1997; while maintaining the order of stay of the award as ordered on December 10, 1996 the following modified conditions were incorporated : (i) the appellant shall pay salary to the respondent regularly in accordance with law from the date of the writ petition filed on December 6, 1996 as stated by the counsel for the bank; and (ii) the arrears of salary from December 6, 1996 shall be paid within a period of seven days and thereafter as and when the salary is being paid to the other staff of the bank. It appears that the counsel of the bank also made a statement to that effect. On a complaint that the order dated February 17, 1997 was not complied with, the case was taken up on March 31, 2000 and the appellant was directed to explain as to why the said order has not been complied with. On May 4, 2000, it was brought to the notice of the Court that the respondent was being paid Rs. 900 per month which represented the full wages last drawn. On that date the court directed the appellant to pay the

A regular pay scale to the respondent with effect from December 6, 1996 within one month of producing a certified copy of the order of the Court. In our view no exception can be taken to that order. Obviously, the salary which ought to be paid to the respondent could not be anything other than the salary which he would be entitled to on reinstatement, *a fortiori*, he would also be entitled to the arrears at the same rate.

We have mentioned above that the import of Section 17-B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the Statement of the objects and reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17-B was inserted in the Act. We have also pointed out above that Section 17-B does not preclude the High Courts or this Court from granting better benefits - more just and equitable on the facts of a case - than contemplated by that provision to a workman. By interim order the High Court did not grant relief in terms of Section 17-B, nay, there is no reference to that section in the orders of the High Court, therefore, in this case the question of payment of "full wages last drawn" to the respondent does not arise. In the light of the above discussion the power of the High Court to pass the impugned order cannot but be upheld so the respondent is entitled to his salary in terms of the said order.

It must, however, be pointed out that while passing an interlocutory order the interests of the employer should not be lost sight of. Even though the amount paid by the employer under Section 17-B to the workman cannot be directed to be refunded in the event he loses the case in the writ petition, [See : *Dena Bank's* case (supra)] any amount over and above the sum payable under the said provision, has to be refunded by him. It will, therefore, be in the interests of justice to ensure, if the facts of the case so justify, that payment of any amounts over and above the amount payable under Section 17-B to him, is ordered to be paid on such terms and conditions as would enable the employer to recover the same.

It is brought to our notice that pursuant to the orders of the High Court under challenge the appellant had paid the amount to the respondent. It is clarified that if the appellant succeeds in the writ petition, it will be entitled to recover the difference of amount (i.e. amount paid under the impugned order less the amount payable under Section 17-B of the Act) from the respondent in accordance with law.

The order under challenge is modified in the above terms and the appeal is allowed accordingly; in the circumstances of the case, we make no order as to costs.

M.P.

Appeal allowed.