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HIGH COURT OF GUJARAT

NEW SHORROCK MILLS LIMITED
Versus
RAMESHBHAI ATMARAM PATEL

Date of Decision: 06 March 1999

Citation: 1999 LawSuit(Guj) 101

Hon'ble Judges: J N Bhatt

Eq. Citations: 1999 2 GLR 1675, 2000 3 LLJ 1182, 1999 4 SCT 837, 1999 LabIC 2412, 1999 3 GCD 1941

Case Type: Misc Civil Application; Civil Application; Special Civil Application

Case No: 106 of 1998; 5037 of 1997; 1424 of 1996

Subject: Labour and Industrial

Editor's Note:
Industrial Disputes Act, 1947 - Sec 17B - "Pay last drawn" - Meaning of - Held, it means pay that employee was getting not the one that other employees would get from time to time -

Code of Civil Procedure, 1908 - Secs 114 - Order 47 Rule 1 - Review Constitution of India, 1950 - Arts 227, 226 - Principles applicable to review application would apply to petition under Art 226/227 of the Constitution of India, if required order passed in writ petition can be modified - Petition allowed

Acts Referred:
Industrial Disputes Act, 1947 Sec 17B

Final Decision: Rule made absolute

Advocates: Keyur Gandhi, Vimal Patel, Nanavati Associates, P M Vyas

Cases Referred in (+): 2

J. N. BHATT, J.

[1] Rule, service of which is waived by learned Advocate Mr. P. M. Vyas for the respondent.

[2] By this application, the applicant-original petitioner has sought review of the order recorded by this Court on 17-10-1997 in Civil Application No. 5037 of 1997 in Special Civil Application No. 1424 of 1996. Obviously, it was an interim order as it was passed and recorded pending the hearing of Special Civil Application on merits. The main matter, like that, Special Civil Application No. 1424 of 1996 is still pending and awaiting adjudication of this Court.

[3] The aforesaid Special Civil Application came to be filed challenging the order dated 21-10-1994 recorded by the Labour Court and confirmed by the Industrial Court by its order dated 4-12-1995, directing reinstatement of the opponent herein with 40 percent back wages. The opponent, of course, has also approached this Court by way of Special Civil Application No. 642 of 1996 questioning the deduction of remaining 60 percent of the amount of back wages. Both the petitions, after hearing, came to be admitted and are pending for final hearing and disposal, while the impugned order has been stayed in the main matter.

[4] Later on, the opponent-workman moved Civil Application No. 5037 of 1997 in the pending Special Civil Application No. 1424 of 1996 for wages in the interim period under Sec. 17B of the Industrial Disputes Act, 1947 (I. D. Act for short) and for fixing the wages payable to him during the pendency of the petition which came to be decided after hearing the parties and considering the facts and circumstances of the case by this Court on 17-10-1997. Interpreting the provisions of Sec. 17B of the I. D. Act this Court held that the workman is entitled to be paid full wages under Sec. 17B of the I. D. Act from the date of the order of the Labour Court with permissible allowances applicable to the post of the workman as if he has been continuing in service.

[5] Pursuant to a judicial pronouncement by the Honble Apex Court interpreting the provisions of Sec. 17B in Dena Bank v. Kirtikumar T. Patel, JT 1997 (9) SC 167 : [1999 (2) SCC 106], the present application came to be made for modification/ review or reconsideration of the order dated 17-10-1997. The Honble Apex Court has in Dena Banks case (supra) held that the expression full wages last drawn in Sec. 17B could mean :-

(i) wages only at the rate last drawn and not at the same rate at which the wages are being paid to the workmen who are actually working.

(ii) wages drawn on the date of termination of the services plus the yearly increment and the dearness allowance to be worked out till the date of the award, and

(iii) full wages which the workman was entitled to draw in pursuance of the award and the implementation of which is suspended during the pendency of the proceedings.

The Honble Apex Court in the aforesaid decision has also highlight1ed the underlying design and purport in incorporating the provisions of Sec. 17B of the I. D. Act and in that context it has been observed as under :

As indicated earlier, Sec. 17B has been enacted by 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 the Industrial Tribunal during the pendency of proceedings in which the said award 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 the workman due to delay in the implementation of the award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or this Court. Since the payment is of such a character 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. To read these words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his services had not passed since it has been set aside by the award of the Labour Court or Industrial Tribunal would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is under challenge. Since the amount is not refundable or recoverable in the event of the award being set aside, it would result in the employer being required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. We are unable to construe the provisions contained in Sec. 17B to cast such a burden on the employer in our opinion, therefore, the words full wages last drawn must be given their plain and material meaning and they cannot be given the extended meaning as given by the Karnataka High Court.

[6] It would be expedient to recall that while allowing the Civil Application under Sec. 17B, by the order dated 17-10-1997, this Court has directed payment of wages from the date of the order of the Labour Court, like that, 24-10-1994 and not from the date of the order of the Industrial Court, like that, 4-12-1995. It was, therefore, submitted that since the present matter is under the provisions of Bombay Industrial Relations Act, the order of payment under Sec. 17B of I. D. Act can be made only from the date of the order of the Industrial Court and not from the date of the order of the Labour

Court. The order of the Labour Court was questioned by the applicant by way of appeal before the Industrial Court and against rejection of appeal, writ petition has been preferred.

[7] In the aforesaid context, two contentions have been raised before this Court on behalf of the applicant-original-petitioner, as follows :

(1) That the petitioner has paid, as per the order of this Court, full wages which the workman would be entitled to draw pursuant to the award with all allowances as if he has been continuously working, which interpretation is running counter to the interpretation made by the Honble Supreme Court in Dena Banks case (supra) and therefore, review order is required to be recorded in consonance with the directions of the Supreme Court as the order under challenge is a temporary order till the disposal of the proceedings.

(2) That the direction of payment of wages under Sec. 17B of the I. D. Act ought to have been made from the date of the order of the Industrial Court, like that, 4-12-1995 and not from the date of the order of Labour Court, like that, 20-10-1994.

[8] Learned Counsel Mr. Vyas appearing for the opponent, while opposing the contentions raised on behalf of the applicant, with full vehemence, has pleaded that there is no case for review and the applicant is not entitled to any modification or change in the order passed by this Court under Sec. 17B of the I. D. Act. He has further submitted that not only that the review is not maintainable but the applicant has to challenge even the interim order before the appropriate higher forum, if it is aggrieved by the order.

After having, dispassionately, examined the decision of the Honble Apex Court in Dena Banks case (supra) and having considered the facts and circumstances of the case and the rival submissions raised before this Court, the impugned order of this Court dated 17-10-1997 in Civil Application No. 5037 of 1997 in Special Civil Application No. 1424 of 1996 is required to be reviewed for the following reasons :

(1) That the impugned order interpreting the provisions of Sec. 17B of the I. D. Act and directing payment was not a final order about which there cannot be any dispute and as such there is no dispute. Obviously, it is an order by way of stop-gap arrangement pending the final hearing of the main petition so that the workman has not to suffer, who is thrown out of job. It is, therefore, clear that the review is sought of an interim, temporary order passed pending the disposal of the main petition.

(2) The contention that the impugned order was final and cannot be varied or modified or reviewed cannot be accepted.

(3) The principles analogous to the provisions of Sec. 114 and Order 47 Rules 1 & 2 of Code, obviously, would be attracted determining the merits and adjudicating the disputes between the parties. It is true that the circumference of the controversy with regard to review power has shrunk down to a very narrow dimension. Nonetheless, in an appropriate and fit case, in the larger interest of justice, applying the analogous principles of the aforesaid provisions of the Code, the impugned order could be altered, modified or varied so as to do complete justice and to nullify the miscarriage of justice.

[9] It would be proper and expedient, at this juncture, to refer to a decision of the Honble Apex Court in State of Kerala v. P. K. Syed Akhar, 1988 (1) SCC 599, wherein, a Bench of three Honble Judges of the Apex Court have taken a view in a case of refund in a tax matter while disposing of the review petition, which fully reinforces the view which this Court is inclined to take in this matter. A few facts of the said case may be helpful to appreciate the further merits of this application. It was matter of question of refund of licence fee in a civil appeal on the ground of invalidity of the principal Act as well as Validation Act. Later on, Validation Act was upheld. In the circumstances of the case, State of Kerala preferred petition to review the order for refund of licence fee and the Honble Supreme Court after examining the provisions of Order 47, Rule 1 of the Code and also Art. 226 of the Constitution of India held that even after the disposal of the matter on merits, review was possible and permissible so as to do justice.

[10] The review petition preferred by the State after the matter which was concluded was allowed holding that it was maintainable. The High Court of Kerala had taken the view that the review was not competent. It was, clearly, held by the Honble Apex Court that the Kerala High Court was not justified in refusing to entertain the review application and the High Court was in clear error in taking the view that the review petition was not maintainable notwithstanding that the validity of the Act has been subsequently upheld by the High Court whereas the judgment sought to be reviewed was based on the premise that the Validation Act was ultra vires. Accordingly, the civil appeal was allowed setting aside the order refusing to entertain the review petition recorded by the High Court. Not only that, instead of remanding the matter to the High Court, in the facts and circumstances of the case, the order of the High Court was quashed and set aside and the order of refund of tax collected from the respondents during the years was also quashed and set aside. Therefore, it was directed that the State shall not be required to refund the amount.

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[11] It could very well be visualised from the aforesaid proposition of law, clearly expounded and laid down by the Apex Court that the powers of review enshrined in the provisions of Sec. 114 read with Order 47, Rule 1 of Code can be exercised in a similar situation. In the present case, no final order is yet recorded as the petitions are awaiting final judicial adjudication. It was an interim and stopgap arrangement under Sec. 17-B of the I. D. Act. Therefore, this Court has no hesitation in recording that the present review is competent and maintainable and the impugned interim order under Sec. 17B of the I. D. Act during the pendency of the main writ petition can be altered, modified by review, after hearing the parties, in accordance with law.

[12] Before concluding one more submission needs to be examined which came to be mentioned on behalf of the respondent by learned Advocate Mr. Vyas that in the event of setting aside the impugned order of this Court, the workman will be required to refund large amount of arrears of wages as the applicant has paid the full payment pursuant to the impugned order. Obviously, this submission ought to be examined, sympathetically. In the light of the peculiar facts and special circumstances obtainable in the present case and the status of the opponent, who is a workman, it would not be proper to direct him to refund the full amount at a stretch. But instead it would be quite in consonance with equity and justice to direct adjustment of payment under Sec. 17B of the I. D. Act towards the amount of refund which becomes due by virtue of this order. It is, therefore, made clear that the opponent will not be required to refund the amount, but the applicant would be entitled to adjust the said amount towards the payment of wages as interpreted by Hon'ble Apex Court in Dena Bank's case (supra) during the pendency of the writ petition. It is also further clarified that the difference of amount calculated on the basis of the order of this Court under Sec. 17B recorded on 17-10-1997 and the interpretation of Sec. 17B by the Hon'ble Apex Court in Dena Bank's case (supra) shall be only adjusted towards the payment under Sec. 17B as per the decision of the Hon'ble Supreme Court, and thereafter, upon adjustment being complete, the applicant shall be liable to pay the amount as per the ratio propounded in the judgment of the Supreme Court.

Accordingly, this application is allowed. Rule is made absolute accordingly with no order as to costs.

Rule made absolute.