

P. Chennaiah Vs. Deputy Executive Engineer and ors.

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Court : Andhra Pradesh

Decided On : Sep-22-1995

Reported in : (1996)IILLJ240AP

Judge : P.S. Mishra, C.J. and ;B. Sudershan Reddy, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 17B

Appeal No. : W.A. No. 627/1995

Appellant : P. Chennaiah

Respondent : Deputy Executive Engineer and ors.

Advocate for Def. : K. Janardhana Rao, Adv. for Respondent Nos. 1 and 2 and ;The Govt. Pleader, for Respondent No. 3

Advocate for Pet/Ap. : Y. Jagan Mohan and ;V. Hari Haran, Adv.

Disposition : Writ appeal allowed

Judgement :

P.S. Mishra, C.J.

1. Heard. In Writ Appeal No.335 of 1995 this Court has held, in agreement with the view expressed by the Bombay High Court, as follows:-

'Bombay High Court's view in the case of Carona Sahu Co. Ltd. v. A.D. Munafkhan and Ors. (1995-I-LLJ-47), however, is similar to the view taken by us in these words:

'The Parliament had introduced Section 17B of the Act with the object that the workman is not deprived of wages which he is entitled to draw in case the award directing reinstatement is implemented. The workman is deprived of the wages payable in pursuance of the award only because of pendency of the proceedings. The award directing reinstatement and continuity of service makes it clear that the dismissal of the employee was illegal and in the eyes of law the workmen continued in service and consequently the workman was entitled also to payment of backwages. The determination of the backwages is only on the basis of what the workman would have drawn during the period commencing from the date of dismissal and till the date of reinstatement and the quantum of backwages includes all the permissible increases during that interregnum. The expression 'full wages last drawn' in our judgment means the 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 submission of Sri Bhaktal, that the expression 'last drawn' suggests that the workman is entitled only to that amount which was received by him at the time of dismissal cannot be accepted. Though the word 'drawn' connotes past tense, it is obvious that the proper construction of the section is that the workman is entitled to the full wages which the workman would have been entitled to draw but for the pendency in this Court.'

We are in respectful agreement with the view expressed by Bombay court. We conclude accordingly that the learned single Judge has committed no error.

There is hardly any reason for us to detain our conclusions for answering the argument that the court cannot take into account the date of the award and should order, if at all, payment in lieu of reinstatement, from the date the award became executable. Date of the award shall always be the date when the award becomes enforceable and if backwages are not granted and only reinstatement is ordered, the reinstatement shall take place only when the award is enforced and it can be

enforced only from the date it is made enforceable'.

2. Learned counsel for the respondents, however, has drawn our attention to an order by the Court in Writ Appeal No. 1551 of 1994 which is to the following effect:

'In view of the award of the Labour Court directing reinstatement of the appellant, the employer is liable to comply with the provisions of Section 17B of the Industrial Disputes Act. Unless it is found that the employee is gainfully employed, the employer is liable to pay the full wages last drawn by the employee who is directed to be reinstated. The amount of Rs. 150-00 referred to by the Labour Court in its award relates to the amount payable each month towards back wages payable to the employee and it has nothing to do with the full wages drawn by an employee. In view of the award passed by the Labour Court and having regard to the provisions of Section 17B, we direct that the respondents 1 and 2 shall pay to the appellant the full wages drawn by him at the time of termination of his services, with effect from January 20, 1994 till the disposal of the writ petition. If any amount had already been paid pursuant to the interim direction of the learned single Judge, that amount shall be given credit to and only the balance of the amount shall be paid to the appellant. The order under appeal is modified to the extent indicated above'.

3. The view expressed by the Court, however, in Writ Appeal No. 1551 of 1994 does not conflict with the view taken by the Court in Writ Appeal No. 335 of 1995, for the Court's order to pay to the appellant the full wages drawn by him at the time of termination of his service is not preceded by any decision, as to what the wages last paid, as contemplated under Section 17B of the [Industrial Disputes Act, 1947](#), would mean. This aspect of the matter has been decided by the Court in Writ Appeal No. 335 of 1995. While admitting the writ petition against the award of reinstatement, learned single Judge has ordered as follows:

'In all these cases an award is passed by the Labour Court dated December 6, 1993 holding the respondents as the Non muster roll employees of the petitioner and directed reinstatement within 30 days from the date of the award and till then to pay Rs.150/- per mensem to them. In all these cases interim applications are filed to stay the operation of the award. In three cases viz., W.P.Nos. 7322/94,

9230/94 and 7370/94 interim orders have been passed by this Court directing payment of Rs. 150/- per mensem to the respondents pending disposal of the writ petitions, but the award is stayed only in regard to the reinstatement. Such a relief is claimed in all the other cases herein. All these petitions arose therefrom which were initiated by the Management as against the respondents who claim to be the workmen. Prima facie, the Labour Court has given a finding that the respondents are the workmen of the petitioner and that they are entitled to be reinstated into service or till then to get wages at the rate of Rs. 150/- per mensem. On going through the award, it appears that the respondents claim to be the N.M.R. Employees, which is denied and claimed to have been illegally terminated from their services as against the law and the rules and that they are entitled to be reinstated . The Presiding Officer of the Labour Court after holding an enquiry, had passed the impugned award in all these cases. Therefore, prima facie, the status quo is that as on the date of award or on the date of the writ petitions, the respondents were not at all in service as they were to be reinstated in pursuance of the award, and they were to get the wages in accordance with the award. Section 17B of the [Industrial Disputes Act, 1947](#) mandatorily contemplates that where the matter is taken up before the High Court or the Supreme Court, the employer shall be liable to pay during the pendency of the proceedings full wages last drawn to the employees including any maintenance allowance, etc., admissible under Rules. In view of this although, no interim order for reinstatement can be directed against the petitioners in all the writ petitions, but they are bound to pay such wages as is contemplated under Section 17B of the [Industrial Disputes Act, 1947](#). The respondents claim the wages at the rate of Rs. 1818-40 per mensem. From the award it is difficult to make out whether they were actually paid so much. However, in view of the prima facie finding that they shall be compensated at Rs. 150/- per mensem till they are reinstated, this Court has no other material except to accept it as the amount last drawn and paid, for the purpose of Section 17B of the Act. Particularly when an interim order is passed in all these matters on equitable grounds after issuing notice to the respondents in addition to the merits of the case, this court finds no reason to pass any order other than what already passed in the cases'

4. The above order has been passed by the learned single Judge without any exercise to know whether the person who was below the appellant-workman in the service of the respondent-employer has received any benefit of revision in the scale of pay or not and the revision has been effected by merging dearness allowance and other allowances with the basic salary drawn when the appellant was removed from service. The respondent employer is duty bound to disclose to the Court the wages that are being paid in lieu of the wages received by the appellant and Ors. similarly situated at the time of his removal from service. The Court, in view of the judgment in writ appeal No. 335 of 1995, is required to seek such information from the respondent-employer as well as an affidavit by the appellant herein that he had/has not been gainfully employed anywhere else.

5. For the reasons aforementioned, the impugned order is set aside. The case is remitted to the learned single Judge for disposal of the matter and to pass necessary orders in terms of Section 17B of the [Industrial Disputes Act, 1947](#). The Writ Appeal is accordingly allowed.