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Court : Kerala

Decided On : Nov-17-2008

Reported in : (2009)IILLJ127Ker

Judge : S. Siri Jagan, J.

Acts : Industrial Disputes Act - Sections 17B; [Contempt of Courts Act, 1971](#);
Contempt of Courts (High Court of Kerala) Rules - Rule 6

Appeal No. : C.C.C. No. 1236/2008

Appellant : Valsalan

Respondent : Aravindan

Advocate for Def. : A. Mohamed Mustaque and; Kauser Edappagath, Adv.

Advocate for Pet/Ap. : K. Anand, Adv.

Judgement :

ORDER

S. Siri Jagan, J.

1. This contempt case is filed by a workman involved in an industrial dispute, the award in which was under challenge in the writ petition in which an order under Section 17-B of the Industrial Disputes Act was passed by me on August 8, 2006,

directing the respondents herein to pay wages under Section 17-B of the Industrial Disputes Act to the workman involved in the industrial dispute, till the disposal of the writ petition. The allegation raised by the petitioner in the contempt case against the respondents is that, earlier, when Cont. Case (C) No. 1441/2006 for non-payment of arrears of 17B wages was filed, the respondents paid the amount when the Court was about to frame charges. But, thereafter, they did not continue to pay wages as directed in Section 17-B order. The petitioner therefore seeks initiation of proceedings under the Contempt of Courts Act for punishing the respondents for violation of the direction in Annexure A order.

2. The respondents oppose the contempt case on three grounds. The first is that the writ petition itself was disposed of by judgment dated June 6, 2008, in which it was found that since the bus in which the workman was employed had been disposed of, there was no point in ordering reinstatement and the Labour Court was directed to fix compensation as an alternate relief to the workman. According to the respondents, Annexure A order, which is an interim order in the writ petition, has merged with the judgment in the writ petition itself and insofar as the petitioner has not chosen to get his right to realise Section 17-B wages as per the order passed, reserved in the judgment, he cannot now separately initiate proceedings under the Contempt of Courts Act for violation of that order. The second is that the respondents have no means to pay the balance wages under Section 17-B insofar as the 1st respondent is not employed but is only a manager of a school and the 2nd respondent is stated to be a primary school assistant drawing only about Rs. 8000/-p.m. Therefore, they claim to have no means to pay the amount directed to be paid and therefore there is no wilful disobedience of Annexure A order warranting initiation of proceedings for contempt. Lastly, the respondents would contend that Section 17-B of the Industrial Disputes Act contemplates a relationship of employer-employee which has been severed on account of the judgment in the writ petition itself. Therefore, there is no question of payment of 17-B wages any more.

3. In answer to the above contentions, counsel for the petitioner would point out that the right of the workman under Section 17-B of the Industrial Disputes Act is an independent right apart from the right under the award, which is under

challenge in the writ petition and therefore it has to be complied with by the respondents, notwithstanding the disposal of the writ petition. Counsel for the petitioner would point out that the 1st respondent is the manager of an L.P. School which itself would go to show that he has means to pay the amounts as directed in Annexure A order. He further points out that the 2nd respondent being a L.P. School Assistant drawing more than Rs. 10,000/- per month as salary, there is no point in claiming that the respondents have no means to pay. He also points out that the 1st respondent and husband of the 2nd respondent are doing contract work together. Regarding the third contention, the petitioner would point out that the question of ceasing of employer-employee relationship does not arise in this case at all since the award has been passed recognising that relationship. There is no question of severing of the relationship once the writ petition is disposed of insofar as the award is concerned and consequently in respect of Annexure A order under Section 17-B until the date of disposal of the writ petition. Even otherwise, even if the writ petition is disposed of, the respondents are liable to pay unpaid wages under Section 17-B of the Industrial Disputes Act till date of disposal of the writ petition.

4. I have considered the objections raised by the respondents for the purpose of deciding whether there is a prima facie case for further proceedings under the Contempt of Courts Act.

5. I do not find any merit in any of the contentions of the respondents. The right under Section 17-B is an independent statutory right of a workman who has been directed to be reinstated in the award, which is challenged in a writ petition at the instance of the management, to claim wages at the rate last drawn by him before termination of service, during the pendency of the writ petition. I am of opinion that the result of the writ petition itself would not affect the right of the workman to realise wages under Section 17-B till the date of disposal of the writ petition. Even if the writ petition is allowed setting aside the award, then also the management is liable to pay wages under Section 17-B till the date of judgment in the writ petition. This position is very clear from the objects and reasons for enacting the Section quoted by the Supreme Court in *Bharat Singh v. Management of New Delhi Tuberculosis Centre* : (1986) IILLJ217SC and various decisions of the Supreme

Court on the subject. The Objects and Reasons stated thus at p. 220 of LLJ:

9. When Labour Courts pass awards of reinstatement, these are often contested by an employer in the Supreme Court and High Courts. It was felt that the delay in the implementation of the award causes hardship to the workman concerned. It was, therefore, proposed to provide the payment of wages last drawn by the workman concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or High Courts.

6. As such, right of a workman under Section 17-B is an independent statutory right apart from the writ petition itself, which cannot be denied whatever be the merits of the case or the result of the writ petition. As such, an order under Section 17-B cannot be regarded merely as an interim order in the writ petition pending disposal of the writ petition, which merges with the final judgment in the writ petition. It has a separate existence apart from the writ petition, regardless of the final result in the writ petition.

6. In *Bharat Singh v. Management of New Delhi Tuberculosis Centre* (supra), the Supreme Court held that Section 17-B does not confer any new jurisdiction, but it is a codification in statutory form of the right available to the workmen to get back wages when certain given conditions are satisfied. Formerly, the workman had no right to claim it. The Section recognises the right of the workman to claim the same as of right instead of claiming as a discretionary relief to be granted by the Court. In *Dena Bank v. Kirthikumar Patel* 1998 I LLJ 1 (SC), the Supreme Court held thus at p. 7 of LLJ:

22. ...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 of this Court.... Since the amount is neither 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.

See also the decisions of this Court in *Commandant, Defence Security v. Secretary, NCCGUE Association* : (2001)IILLJ1170 Ker and *Sasikala Kumar v. Piravathoor Service Co-operative Bank Ltd.* : (2006)ILLJ811Ker . It is pertinent to note that the Supreme Court compares 17-B wages with subsistence allowance, which is another statutory right of a workman who has been suspended pending disciplinary proceedings. Even if the workman is ultimately found guilty in the disciplinary proceedings, the workman entitled to subsistence allowance. Likewise, wages under Section 17-B is statutory wages recoverable from the employer irrespective of the result of the writ petition, even after the disposal of the writ petition, unlike a mere interim relief pending disposal of the writ petition, which would ultimately merge with the final judgment of the writ petition and does not have an independent existence of its own. Right to receive wages under Section 17-B is an independent statutory right unconnected with the final judgment in the writ petition and has a separate existence and enforceability of its own, subject, of course, to the right of the employer to adjust the said amount against the back wages payable to the workmen, if ultimately the reinstatement is upheld. The Madras High Court had, in the decision of *Workmen represented by India Cements Employees Union, Sankari West v. Industrial Tribunal, Madras* : (1991)IILLJ141Mad explained the scope of Section 17-B thus:

This right is a separate and independent right available to a workman during the pendency of the proceedings before a High Court or the Supreme Court, where the proceedings have been preferred by the employer, against the award of reinstatement in his favour.

The pre-requirements for invoking this Section are:

- (i) the award of the Tribunal should have directed reinstatement of the workmen on setting aside the order of his dismissal or unfair termination of service;
- (ii) the employer should have preferred proceedings against such award before a High Court or the Supreme Court;

(iii) the workmen should not have been gainfully employed in any establishment during the pendency of the proceedings; and

(iv) as a proof of that, the workman should have filed an affidavit before the Court before which the proceedings have been preferred.

Once these requirements are satisfied, the workman becomes entitled to the wages as contemplated by this provision and no order of the Court, before which the proceedings are pending, is necessary for entitling him to such wages, as the statute itself creates the right. If, after the workman has filed the affidavit of non-employment, the employer fails to pay wages to the workman, as required by this Section, the workmen may file an application before such Court for direction to the employer to make such payment. Non-compliance with the requirement to pay such wages to the workman should block further hearing of the proceedings before the Court.

A learned Judge of this Court has also, in the decision of WHD' Cruz & Sons v. M.E. Thomas : (1996)ILLJ706Ker held that Section 17-B enacts a statutory form of separate and independent right available to a workman during the pendency of the proceedings before the High Court. I am in respectful agreement with the above decision. In this connection, it is relevant to note that in the decisions of Bhaskaran v. Janardhanan Pillai : (1990)ILLJ484Ker and Commandant, Defence Security v. Secretary (supra), two Division Benches of this Court had gone to the extent of holding that wages under Section 17-B are payable by the employer, even if the establishment was closed, which would go to show the mandatory and compulsory nature of the requirement of Section 17-B. Right to wages under Section 17-B is a distinct and separate right of the workman which arises as soon as the writ petition is filed and is unconnected with the merits of the challenge against the award and the relevance of the writ petition is only for deciding the period for which the wages are to be paid. That right is enforceable for the period up to the date of disposal of the writ petition regardless of the result of the writ petition and if any amounts remain unpaid pursuant to the order of the Court under Section 17-B, the liability of the employer to pay the same does not cease just because the writ petition is finally disposed of. That order would continue to be in force until the entire

amounts due as per the order is completely paid off. If direction in that order is violated, action under the Contempt of Court Act is also, therefore, maintainable. In this connection, I note that in the decision of Hans Raj Mahajan & Sons (P) Ltd. v. P.O. LC , the Punjab and Haryana High Court has taken the view that where the employer filed a writ petition against the award of the Labour Court ordering reinstatement and the workman also filed an application under Section 17-B, the mere disposal of the writ petition does not render the application of the workman infructuous and the management was liable to pay wages from the date of filing of the writ petition till it was finally disposed of which although takes the interpretation to the extreme, cannot be held to be against the scope of the Section. Therefore, there is no merit in the contention that once the writ petition is disposed of, the order under Section 17-B of the Industrial Disputes Act merges with the judgment in the writ petition and since the petitioner has not chosen to get his right for realising 17-B wages reserved in the judgment itself, the same cannot be enforced and no petition under the Contempt of Courts Act would lie for non-compliance of the order under Section 17-B.

7. I am not prima facie satisfied that the contention of the respondents that they have no means to pay is sustainable. Admittedly, the 1st respondent is the manager of a U.P. School and the 2nd respondent is a teacher working in a L.P. School. The question as to whether they have means to pay or not is a matter for evidence which has to be done at the time of taking evidence in the contempt case, even if such a contention is maintainable in an action under the Contempt of Courts Act, especially since the respondents did not take such a contention at the time of hearing of the petition under Section 17-B.

8. I also do not find any merit in the contention that since the writ petition itself was disposed of directing the Labour Court to consider the alternate relief of payment of compensation, the employer-employee relationship between the respondents and the petitioner ceases. The question of granting the alternate relief of awarding compensation arises only if there is employer-employee relationship between the respondents and the petitioner. For all the above reasons, I do not find any merit in any of the contentions of the respondents. Since they have taken the stand that they are not liable to comply with Annexure A order, I am prima facie satisfied that

further proceedings under the Contempt of Courts Act are warranted against the respondents. Accordingly, the matter is directed to be placed before the Bench dealing with contempt matters under the second proviso to Rule 6 of the Contempt of Courts (High Court of Kerala) Rules under the [Contempt of Courts Act, 1971](#), for further proceedings.

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