

Ram Dhan Vs. the Judge, Labour Court No. 2 and ors.

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Court : Rajasthan

Decided On : Jan-20-2003

Reported in : (2003)IILLJ959Raj; RLW2003(2)Raj999; 2003(2)WLC485

Judge : S.K. Keshote and; F.C. Bansal, JJ.

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

Appeal No. : S.B. Special Appeal (Writ) No. 310 of 2002

Appellant : Ram Dhan

Respondent : The Judge, Labour Court No. 2 and ors.

Advocate for Def. : G.K. Garg and; Saransh Saini, Advs. for Respondent Nos. 2 and 3

Advocate for Pet/Ap. : Satish Khandal, Adv. for workman

Disposition : Appeal allowed

Judgement :

Keshote,J.

1. Heard learned counsel for the parties.

2. Admit.

3. Shri G.K. Garg and Shri Saransh Saini, Advocates, waives the service of notices for respondents No. 2 and 3. The respondent No. 1 is neither necessary nor proper party to this appeal and accordingly service of notice of this appeal on the respondent No. 1 is dispensed with.

4. With the consent of the learned counsel for the parties the appeal is taken up for final hearing.

5. The appellant's case is that he was in service of the respondents No. 2 and 3. His services were terminated under the order of the respondent corporation dated 19th of April, 1990. He challenged this order of termination of his services by filing the writ petition before this Court but that has been dismissed with the liberty to the appellant to raise industrial dispute. The industrial dispute was raised. The learned Labour Court No. 2, Jaipur under its award dated 8th of May, 2001 declared the order of the respondent Corporation of terminating the services of the appellant invalid. The respondent corporation was directed to reinstate the appellant workman back in service with continuity thereof and 25% of back wages.

6. The respondent corporation challenged this award by way of filing S.B. Civil Writ Petition No. 5690/2001. On 12th of December, 2001 the writ petition was admitted and the operation, implementation and execution of the award aforesaid has been stayed. The appellant, in the writ petition, submitted an application under Section 17B of the [Industrial Disputes Act, 1947](#) (for short, the Act, 1947) which came to be rejected under the order dated 18th of March, 2002. Thus this special appeal.

7. Learned counsel for the appellant submitted that the learned Single Judge has not correctly appreciated the provisions of Section 17B of the Act, 1947. It is urged that while considering the application filed by the workman under Section 17B of the Act, 1947 the Court is not required to go into the merits of the award. The Court has no discretion except to pass the order in favour of the workman on this application where it is satisfied that the labour Court by its award has directed the reinstatement of the workman, the employer prefers proceedings before the High Court or the Supreme Court and the workman has not been employed in any of the establishment during, such period. In support of his contention the learned

counsel for the appellant placed reliance on the decision of the Apex Court in the case of Dena Bank v. Kirtikumar T. Patel (1), and the Division Bench decision of this Court in the case of Raiasthan State Road Transport Corporation v. Judge, Labour Court, Bikaner and Anr. (2).

8. Shri G.K. Garg and Shri Saransh Saini, learned counsel for the respondent Corporation raised a preliminary objection re the maintainability of the appeal. It is contended that the order passed by the learned Single Judge is interlocutory order and is not a judgment within the meaning of Section 18 of the Rajasthan High Court Ordinance, 1950 and thus this appeal is not maintainable.

9. On merits, Shri G.K. Garg and Shri Saransh Saini, learned counsel for the respondent Corporation contended that the award of the learned Labour Court No. 2, Jaipur has been stayed by the learned Single Judge and so long the stay continues the relief as prayed for in the application can not be granted and rightly It has not been granted in favour of the appellant. It has next been contended that prima facie the learned Single Judge has not found any merits in the award of the Labour Court No. 2, Jaipur thus it has not committed any illegality in denying the relief to the appellant under Section 17B of the Act, 1947.

10. it is urged that this court may expedite the hearing of the writ petition rather to make the interference in the order passed by the learned Single Judge.

11. Lastly it is contended by the learned counsel for the respondent Corporation that the appellant has been engaged in the project which has already been completed and thus the respondent Corporation is not in a position to give reinstatement to the appellant and thus no benefits under Section 17B of the Act, 1947 may be ordered in his favour.

12. The learned counsel for the appellant urged that it is not an interlocutory order. It is the order which finally decide the right conferred upon the appellant under Section 17B of the Act, 1947 by the Parliament and thus it falls in the definition of judgment and this appeal is maintainable. In support of his contention the learned counsel for the appellant placed reliance on the decision of the Apex Court in the case of Employer in Relation to Management of Central Mine Planning and Design

Institute Limited v. Union of India and Anr. (3).

13. As regards to the other contention raised by the learned counsel for the respondent Corporation it is contended that identical contentions raised have already been answered against the management by the Division Bench of this Court in the case of Rajasthan State Road transport Corporation v. Judge, Labour Court, Bikaner and Anr. (supra).

14. We have given our anxious and thoughtful considerations to the rival contentions raised by the learned counsel for the parties, carefully gone through the writ petition, its enclosures, more particularly the award of the Labour Court, this memo of appeal and the order of the learned Single Judge.

15. Section 17B of the Act, 1947 was inserted to the Act, 1947 vide Section 11 of the Act 46 of 82 with effect from 21st of August, 1984. The object and reasons for inserting this Section in the Act are as follows.

'When Labour Court pass award of reinstatement, these are often contested by the employer in the Supreme Court and High Court. 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 by the Supreme Court or High Courts.'

16. The delay in operation, implementation or execution of the awards passed by the Labour Court/Industrial Tribunal/National Tribunal in favour of the workmen is always there and one of the reasons is the contest by the employer. This contest by the employer consequently causes hardship to the workman. On account of delayed tactics adopted by the employer the workman suffers a lot. The workmen are not able to get their legal dues and rights even after they have won their cases before the Labour Court/Industrial Tribunal/National Tribunal. A Fight between the workmen and the employer is unequal fight. With a view to carve this evil the Parliament has inserted this social beneficial provision in the [Industrial Disputes Act, 1947](#) so as to the workman after his success in the dispute before the Labour Court/Industrial Tribunal/National Tribunal may get his full back wages last drawn

by him inclusive of any maintenance or allowances admissible to him under any rule provided he has not been employed in any service during such period. The object with which this Section 17B is inserted in the Act, 1947 is consistent with the progressive social philosophy enshrined in the Constitution of India. Their Lordships of the Supreme Court in the case of Dena Bank v. Kiritikumar T. Patel (supra) stated that Section 17B of the Act, 1947 confers a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge to the award of Labour Court/Industrial Tribunal/National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of award being set aside. Their Lordships of the Supreme Court in this very judgment held as under.

'As Indicated earlier Section 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.'

17. In the case of R.S.R.T.C. v. Judge, Labour Court (supra) the Division Bench of this Court, with regard to the contention raised in that case re the maintainability of the application under Section 17B of the Act, 1947 during the continuation of the stay order, held as under,

"The next contention raised by the learned counsel for the appellant is that when once the operation of the award was stayed by the High Court, unless the stay order is vacated, the application under Section 17B of the Act was not maintainable and no order could have been passed on that application, an interim ex parte order was passed in favour of the appellant petitioner at the initial stage. After the service on the respondent workman, the workman was entitled to move

an application under Section 17B of the Act or for vacation of the stay order. Application under Section 17B of the Act is nothing but an application for vacation or modification of the stay order. The Court, after hearing the parties, is empowered to modify or vacate the stay order. If in view of the provisions of Section 17B the learned Single Judge has allowed the application and directed the appellant Corporation to pay the full wages to the workman then that order amounts to modification of the stay order and the Court was competent to pass such an order. The maintainability of the application under Section 17B is not, in any way, affected by the interim order passed on the stay application. The workman cannot be denied the benefit of his successful litigation and in the facts and circumstances of the case, the order was necessary to eliminate the hardship of the workman. The workman cannot be allowed to suffer on technical grounds. Merely because he was not properly advised or he could not present the application for redressal of his grievances immediately after the service, cannot disentitle him for his legal due. Section 17B is mandatory in character and it gives a mandate to the Court to award full wages if the conditions enumerated in the Section are satisfied. All the three ingredients for making the application under Section 17B are fully satisfied and, therefore, the learned Single Judge was right in allowing the application filed by the workman respondent. The delay in making the application will not affect the powers of the Court. The contention raised by the learned counsel for the appellant is bereft of any substance.'

18. Having a glance of the provisions of Section 17B of the Act, 1947 what it comes therefrom that the stay of operation of the award of the Labour Court/Industrial Tribunal/National Tribunal by the High Court or the Supreme Court in the proceedings has nothing to do with the maintainability of the application under this provision. As the award has been stayed as a consequence thereof there may not be any obligation or any duty of the employer during the continuation of stay to reinstate the workman in the service. If what it is contended by the learned counsel for the respondent Corporation is accepted then Section 17B of the Act, 1947 will become redundant. Further, stay of the award in the proceedings if the contention of the learned counsel for the respondent Corporation is accepted Section 17B of the Act, 1947 will stand inoperative.

Section 17B of the Act, 1947 confer a right to the workman who is not in the employment to get full wages last drawn inclusive of any maintenance or allowance admissible under the Rule during the pendency of the proceedings in the High Court or the Supreme Court. In a case there is a award of reinstatement of the workman in his favour of the Labour Court/Industrial Tribunal/National Tribunal and the same is challenged before this Court or the Supreme Court and the order has been passed staying the operation, implementation or execution thereof, it is not the requirement of this provision that first the workman has to go for vacation of the stay granted by the Court. The workman on receipt of the notices or even before he came to know about the stay has a right to apply under Section 17B of the Act, 1947 for grant of full back wages. Where the court has passed the order in favour of the workman under Section 17B of the Act, 1947 option is available to the employer either to reinstate back the workman in service or he has to pay the wages as ordered by the Court. Thus, having a glance of the provisions of Section 17B of the Act, 1947 we are of the considered opinion that to apply for the benefit under Section 17B of the Act, 1947 the prayer for vacation of stay order is not sine qua non. We are also of the opinion that the stay of the award as ordered by the Court is of no consequence or effect on the right as conferred by the Parliament upon the workman under Section 17B of the Act, 1947 in the case where there is the award of reinstatement in service by the Labour Court/Industrial Tribunal/National Tribunal and the same has been challenged by the employer in the High Court or the Supreme Court. However, grant of benefits under Section 17B of the Act, 1947 depend upon fulfillment of conditions to the satisfaction of the Court as provided under this provision.

19. We find sufficient merits and substance in the contention of the learned counsel for the appellant that while considering the application of the workman filed under Section 17B of the Act, 1947 the court is not called upon to examine the merits of the award. Section 17B of the Act, 1947 nowhere contemplates that at this stage the court is to consider the merits of the case and where it is satisfied that the award is not sustainable the application of the workman filed under Section 17B of the Act, 1947 can be rejected. If that is taken to be the requirement of the Section 17B of the Act, 1947 what the court is to do to add words in the Section which was not contemplated by the Parliament. Secondly, if that way the

application of this provision is considered in a given case then the Section 17B of the Act, 1947 will become ineffective and inoperative. What the court at this stage is required to consider and satisfy that the Labour Court/Industrial Tribunal/National Tribunal by its award direct reinstatement of the workman, the employer prefers proceedings against such award in High Court or the Supreme Court and the workman is not employed in any establishment during such period and affidavit by him has been filed to this effect in the Court and having been satisfied of these three ingredients of this Section the order or direction to the employer to pay full back wages last drawn by the workman inclusive of maintenance or allowances admissible under the Rule is as a rule, course or right. From the language of this Section we are satisfied at the time of consideration of the application filled under Section 17B of the Act, the court is not required to go on merits of the award. In the case in hand the learned Single Judge has touched the merits of the award and having been satisfied prima facie that it is not sustainable, this application is rejected. This is an error apparent on the face of the order of the learned Single Judge.

20. Now we advert to the first contention raised by the learned counsel for the respondent Corporation re the maintainability of the appeal. In the case of *R.S.R.T.C. v. Judge, Labour Court (supra)*, the special appeal was against the order of the learned Single Judge passed on the application of the workman under Section 17B of the Act, 1947. In that case the application has been granted and that order was challenged by the Corporation. Here the application is rejected and the order is challenged by the workman. From this judgment we find that against the order passed on the application filed under Section 17B of the Act, 1947 by the workman an appeal is maintainable in this Court. However, the learned counsel for the respondent Corporation submitted that in the said case the counsel for the respondent has not raised this objection and thus it cannot be taken from this judgment that against the interlocutory order appeal lies.

21. In the case of *Employer in Relation to Management of Central Mine Planning and Design Institute Limited v. Union of India and Anr. (Supra)* before their Lordships this point was directly in issue. There the letters patent appeal was filed against the order of the learned Single Judge passed on the application of the

workman under Section 17B of the Act, 1947. In that case their Lordships of the Hon'ble Supreme Court held as under.

'The next question which needs to be considered is, what does the expression 'judgment' mean? That expression is not defined in Letters Patent. It is now well settled that the definition of 'judgment' in Section 2(9) of Code of Civil Procedure has no application to Letters Patent. That expression was interpreted by different High Courts of India for purposes of Letters Patent. In *Asrumati Debi v. Kumar Rupendra Deb Raikot and Ors.* (4), a four Judge Bench of this Court considered the pronouncements of the High Court of Calcutta in *Justices of the Peace for Calcutta v. Oriental Gas Co.* (5), the High Court in Rangoon in *Dayabhai v. Murugappa Chettiar* (6), the High Court of Madras in *Tuljaram v. Alagappa* (7), as also the High Court at Nagpur, the High Court at Allahabad and Lahore High Court and observed as follows:

'In view of this wide divergence of judicial opinion, it may be necessary for this Court, at some time or other, to examine carefully the principles upon which the different views mentioned above purport to be based and attempt to determine with as much definiteness as possible, the true meaning and scope of the word 'judgment' as it occurs in Clause 15 of the Letters Patent of the Calcutta High Court and in the corresponding Clauses of the Letters Patent of the other High Courts. Such an exercise was undertaken by a three Judge Bench of this Court in *Shah Babulal Khimji v. Jayaben D. Kania and Anr.* (8), *Fazal Ali, J.* speaking for himself and *Varadarajan, J.* After analysing the views of different High Courts, referred to above, observed as follows:

'The intention, therefore, of the givers of the Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgment' used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a Trial Judge would amount to a judgment, otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense.' It was pointed out that 'judgment' could be of three kinds :

(1) A final judgment- In this category falls a judgment by which suit or action brought by the plaintiff is dismissed or decreed in part or full;

(2) A preliminary judgment. - This category is sub-divided into two classes:

(a) where the Trial Judge by an order dismisses the suit, without going into the merits of the suit, only on a preliminary objection raised by the defendant/respondent on the ground of maintainability;

(b) where maintainability of the suit is objected on the ground of bar of jurisdiction, e.g., res judicata, a manifest defect in the suit, absence of notice under Section 80 and the like; and

(3) Intermediary or interlocutory judgment.- In this category falls orders referred to in Clauses (a) to (w) of Order 43 Rule 1 and also such other orders which possess the characteristics and trappings of finality and may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding.

Elucidating the third, category, it is observed :

'Every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.' In the instant case, we are concerned with the last mentioned category. From the above discussion, it follows that to determine the question whether an Interlocutory order passed by one Judge of a High Court falls within the meaning of 'judgment' for purposes of Letters Patent the test is whether the order is a final determination affecting vital and valuable rights and obligations of the parties concerned. This has to be ascertained on the facts of each case.'

22. Prima face, we are satisfied that the appeal against the order of the learned Single Judge is maintainable but this judgment may not be taken as if we have finally opined on this point. It is left open for consideration in the appropriate case at length.

23. The learned counsel for the respondent Corporation does not dispute that the Corporation has not filed any reply to the application filed by the appellant workman under Section 17B of the Act, 1947. Thus the contents of this application stand uncontroverted by the Corporation. This application is duly supported by the affidavit of the appellant workman. The averments made in para No. 4 Of the application are verified to be true and correct on his personal knowledge. Para No. 4 of the application reads as under.

'That applicant non-petitioner No. 2 was never in gainful employment after termination of his services and during the pendency of dispute and during the pendency of above noted writ petition and applicant non-petitioner No. 2 is not in gainful employment.'

24. Thus this requirement of Section 17B of the Act, 1947 that the workman had not been employed in any establishment during such period and the affidavit is to be filed to that effect, is fulfilled also.

25. As a result of the aforesaid discussion this appeal succeeds and the same is allowed. The order of the learned Single Judge dated 18.3.2002 whereby the application filed under Section 17B of the Act, 1947 of the appellant has been dismissed in S.B. Civil Writ Petition No. 5690/2001 is quashed and set aside. The application of the appellant filed under Section 17B of the Act, 1947 in this Court on 24.1.2002 is allowed. The respondent Corporation is directed to pay to the workman appellant full wages last drawn by him inclusive of any maintenance or allowance payable under the Rules with effect from 26th of March, 2002. The full back wages shall mean what it is decided by the Hon'ble Supreme Court in the case of Dena Bank v. Kiritikumar Patel, (supra). The respondent Corporation is further directed to pay Rs. two thousand (Rs. 2000/-) as costs of this appeal to the workman appellant.