

State of Rajasthan Vs. Ramesh Kumar

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Court : Rajasthan

Decided On : Feb-19-2007

Reported in : 2007(2)WLN10(1)

Judge : Rajesh Balia and; Chatra Ram Jat, JJ.

Appeal No. : D.B. Civil Special Appeal No. 849/2006

Appellant : State of Rajasthan

Respondent : Ramesh Kumar

Judgement :

Rajesh Balia, J.

1. Heard learned Counsel for the Parties.
2. This appeal is barred by 40 days. Having heard learned Counsel we are satisfied that appellant was prevented by sufficient cause from filing the appeal within limitation. The application under Section 5 of the Limitation Act is allowed. The appeal may now be registered. At the request of the learned Counsel for the parties we have heard the appeal on merit also.
3. The respondent No. 1 whose services were terminated by the appellant has raised an industrial dispute which was referred to the Labour Court Jodhpur.

4. The termination was found to be invalid being in violation of Section 25G of the Industrial Disputes Act, 1947 and further that effect was not given to Section 25 H read with Section 25J of the said Act. As a consequence the termination order was held to be bad and the respondent No. 1 was directed to be reinstated with 25% of the back wages w.e.f. 06.09.1999 until the date of reinstatement.

5. The award of the Labour Court dt. 27.04.2002 was challenged by way of S.B. Civil Writ Petition No. 6178/2003. During the pendency of the writ petition the operation of award was stayed vide order dt. 17.08.2004.

6. The respondent workman had then moved an application under Section 17-B of the Act of 1947 along with affidavit stating that he is not gainfully employed anywhere and he has no source of livelihood.

7. No reply to that was submitted by the appellants. It is in the aforesaid circumstances, order under appeal has been passed by the learned Single Judge on 28.03.2005 directing the appellants to comply with provisions of Section 17-B by making regular payment of salary to the petitioner from the date the award was passed.

8. From the perusal of Section 17-B of the Act of 1947 we are of the opinion that on an application being made by workman during the pendency of proceedings against the award in the High Court or Supreme Court deposing that the workman is not employed in any establishment during such period the employer is liable to pay such workman during period of pendency of such proceedings in the High Court or Supreme Court with full wages last drawn by him along with maintenance allowance that may be payable under any rule.

9. This right the workman gets automatically on filing affidavit to such effect in the High Court or the Supreme Court as the case may be.

10. However, the proviso further provides that where it is proved to the satisfaction of the High Court or Supreme Court that such workman had been employed or receiving remuneration during such period the Court shall order that no wages shall be payable under Section 17-B for such period or part as the case may be.

Apparently, while a specific order is needed for denying wages during the period the proceedings are pended in the High Court or the Supreme Court, no such specific order is needed for making payment of remuneration in terms of Section 17-B for the period during which proceedings remain pending in the High Court or the Supreme Court. Under Section 17-B the workman becomes entitled to full wages last drawn by him inclusive of any maintenance allowance under any rule on filing of the affidavit by the workman that he has not been employed during the pendency of the proceedings.

11. Therefore, so far as allowance of the application of Section 17-B is concerned, no error can be found.

12. However, to the extent the order directs the employer to make regular payment of salary to the workman from the date of award impugned has been passed, is contrary to plain language of Section 17-B.

13. According to Provision of Section 17-B the workman is neither entitled to regular salary of the post held by him at the time termination was effected nor he is entitled to the full wages last drawn by him inclusive of any maintenance allowance admissible to him for period exceeding what has been specifically stated in Section 17-B. A specific period for which the workman becomes entitled to receive from employer full wages last drawn by him inclusive of maintenance allowance, has been prescribed viz. 'during period of pendency of such proceedings in the High Court or Supreme Court'. There is no ambiguity in expression. It does not provide for a fixed starting time for its operation but provides total period for which the employer has been made liable to make payment of full last drawn wages, that period is one during which proceedings challenging award of reinstatement remained pending in High Court. The period of pendency cannot include prior to start of proceedings in the High Court or the Supreme Court. The commencement of the proceedings in the Supreme Court or High Court takes place when the employer prefers such proceedings in respect of award directing reinstatement of the workman and terminates with the termination of proceedings in that Court.

14. Accordingly, the directions issued by the learned Single Judge for making regular payment of salary from the date of award is modified to direction to pay full wages last drawn by respondent No. 2 inclusive of any maintenance allowance admissible to him under any Rule w.e.f. the date the employer has filed the writ petition before this Court that is to say 07.10.2003 until the expiration of proceedings or any order is made by the Court under proviso of Section 17-B if any application to that affect is made by the employer.

15. Accordingly, the appeal is allowed and the order under appeal is modified to the aforesaid extent.

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