

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(L) No. 1544 of 2018

Employer in relation to the Management of the Central Bank of India, body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 represented through its Chief Manager, Regional Office, Motihari, namely Mr. Sujit Kumar, S/o Sri Raghubir Prasad, resident of Shivpur Visa, Dumra, P.O., P.S. & District-Sitamarhi, State-Bihar; presently residing at : Central Bank of India, Regional Office, Baluatal, P.O. & P.S. & District-Motihari, State of Bihar

..... Petitioner

Versus

Their Workman, namely Sri Kanhaiya Yadav, son of Late Ram Balak Yadav, resident of: Village: Navada, P.O. & P.S.: Siswan (Chainpur), Dist: Siwan, State: Bihar represented through General Secretary, Bihar State Central Bank Employees' Association, having its office at: Shail Maheshwari Apartment, Flat No. 102, 1st Floor, 11-Kidwaipuri, P.O. S.K. Puri, P.S. Shastrinagar, Town & District Near Thakur Prasad Community Hall, Patna-800001

..... Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner : Mr.Ravi Prakash Mishra, Advocate
: A.C. to Mr. Sachin Kumar, Advocate
For the Respondent : Mr. Ajit Kumar, Sr. Advocate

I.A. No. 2668 of 2019

11/09.07.2024 None appears for the petitioner on repeated call today and none appeared on behalf of the petitioner even on yesterday, i.e. on 08.7.2024, however, Mr. Ajit Kumar, learned Senior Counsel is present on behalf of the sole respondent-workman.

2. I.A. No. 2668 of 2019 has been filed on behalf of the Respondent for fixing early hearing of the case and for vacating the order dated 24.07.2018 passed in this case by a Co-ordinate Bench of this Court (Justice Rajesh Shankar) and for a direction to the petitioner to allow the benefits of Section 17B of the Industrial Disputes Act to the respondents.

3. Learned counsel for the Respondent Workman has submitted that the writ petition was filed in the year 2018 and Award dated 22.06.2017, passed by the Central Government Industrial Tribunal No. 1, Dhanbad in Ref. Case No. 77 of 2014 has been stayed by the Co-ordinate Bench of this Court (Mr. Justice Rajesh Shankar) although the Tribunal had directed the petitioner vide the said Award to reinstate the Respondent in the services within one month from the date of publication of the Award in the official gazette failing which the Management had been directed to pay back wages to the Workman from 31st day of the publication of the Award in the Gazette. It is submitted that even after passing of Award dated 22.06.2017, the respondent-workman was not able to get its fruits as he is still jobless without any wages till date. It is submitted that the Hon'ble Supreme Court has held that petition under Section 17B should be disposed of at the earliest and in support of the same, learned counsel for the Respondent-Workman has relied upon the judgment/order passed in the case of

Workman Vs. Hindusthan Vegetable Oils Corporation Limited & Ors. reported in 2000 (9) SCC 534.

4. It is further submitted that importance of payment of wages as per Section 17-B of the Industrial Disputes Act has been discussed in the case of **Dena Bank Vs. Kirti Kumar** reported in **1999 (2) SCC 106** at **Para 7, 21** and **23**.

5. It is submitted that a workman should not be allowed to suffer for a long period if the case has not been disposed of and hardship of the workman should also be taken into consideration.

6. It is pointed out that the wages as per Section 17-B of the Industrial Disputes Act is non-refundable or cannot be recovered. It has even been held by the High Courts and Hon'ble Supreme Court that the grant of wages as per Section 17-B of the Industrial Disputes Act cannot be kept in abeyance for a long period and hence, the Order dated 24.07.2018, passed by the Co-ordinate Bench may be vacated and the Respondent may be given the appropriate wages as per provisions of Section 17-B of the Industrial Disputes Act.

7. None appeared on behalf of the petitioner yesterday, i.e. on 08.07.2024 and even today, i.e. on 9.7.2024 none has appeared for the petitioner in the first half, however, Mr. Ravi Prakash Mishra, learned A.C. to Mr. Sachin Kumar, learned

counsel for the petitioner has informed this Court in the second half that the Bank will engage some other counsel to appear in this case.

8. Be that as it may, this Court cannot wait for appearance of a lawyer for a long period and it is the duty of the Central Bank to get engaged a counsel at the time of hearing of this case.

9. The present writ petition, i.e. W.P.(L) No. 1544 of 2018 has been filed on behalf of the petitioner-Management of the Central Bank of India to quash and cancel the Award dated 22.06.2017 passed by Shri R.K. Sharan, learned Presiding Officer, Central Government Industrial Tribunal No.I, Dhanbad in Reference Case No. 77/2014, by which the learned Tribunal had directed for re-instatement of the Respondent-Workman on his post immediately within one month from the date of publication of the Award in the official gazette, failing which the Management has been directed to pay back wages to the workman from the 31st day of the publication of Award in the Gazette.

10. It transpires that the writ petition was filed on 24.03.2018 and thereafter, vide order dated 24.7.2018, a Co-ordinate Bench of this Court (Mr. Justice Rajesh Shankar) had stayed the Award dated 22.6.2017 passed in Reference Case No. 77/2014 by the Presiding Officer, Central Government Industrial Tribunal No.-I, Dhnabad till further order and the

counsel for the Respondent was directed to seek instruction and to file counter affidavit.

11. It transpires that the Respondent-Workman had filed I.A. No. 2668 of 2019 on 13.03.2019 and thereafter, vide order dated 16.07.2019, a Co-ordinate Bench of this Court (Mr. Justice Rajesh Kumar) had allowed time to the petitioner Bank to file response to the application filed under Section 17 B of the Industrial Dispute Act by the Respondent-Workman by fixing the date on 30.07.2019.

12. It further transpires that this writ petition was admitted on 19.08.2019 and the records of the Reference Case 77 of 2014 was called for.

13. Thereafter, the matter has been posted after Covid-19 period and vide order dated 12.09.2023, a Co-ordinate Bench of this Court (Mr. Justice Anil Kumar Choudhary) had allowed time to the petitioner by way of last chance and the matter was directed to be listed after Four weeks.

14. It further transpires that even on 08.02.2024, the learned counsel for the petitioner had prayed for time and time was granted by way of last chance by a Co-ordinate bench of this Court (Justice Anil Kumar Choudhary) by directing to put up the case after six weeks.

15. Thereafter, this case has been listed yesterday, i.e. on 08.07.2024 and listed today, i.e. on

09.07.2024. However, the Management Company is found absent.

16. It has been held by the Hon'ble Supreme Court in the case of **Workmen v. Hindustan Vegetable Oils Corpn. Ltd.** reported in **2000 (9) SCC 534** at **Para 2** and **3** as follows:

“Para 2:- The order under challenge has been passed by a Division Bench of the High Court at Calcutta. Its operative portion states that the writ petition filed by the present appellants and their application under Section 17-B of the Industrial Disputes Act should be disposed of together, expeditiously. We are of the view that an application under Section 17-B should be disposed of before the principal petition and it should be disposed of most expeditiously.

Para 3:- We, therefore, set aside the order under challenge to the extent that it requires the disposal of the writ petition and the Section 17-B application together and we direct that Section 17-B application should be disposed of with great promptitude and before the disposal of the writ petition.”

17. It has been held by the Hon'ble Supreme Court in the case of **Dena Bank v. Kiritikumar T. Patel** reported in **1999 (2) SCC 106** at **Para 7, 21 and 23** as follows:-

“Para 7:- It would be convenient at this stage to set out the provisions contained in Section 17-B of the Act which read as under:

“17-B. Payment of full wages to workman pending proceedings in higher courts.—Where in any case a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the

employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.”

The Objects and Reasons for enacting the said provisions were as follows:

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

It would thus appear that the object underlying the enacting of the provisions contained in Section 17-B is to give relief to the workman in whose favour an award of reinstatement has been passed by the

Labour Court and the said award is under challenge in the High Court or this Court. The said relief has been given with a view to relieve the hardship that would be caused to a workman on account of delay in implementation of the award as a result of the pendency of the proceedings in the High Court or this Court. The question for consideration is: what is the extent to which such relief has been granted to a workman under this provision? The Objects and Reasons do not indicate an answer to this question and its answer has to be found in the provisions of the enactment. Since the expression “full wages last drawn” in Section 17-B has been construed by the various High Courts in the decisions referred to above we would briefly refer to the same.

Para 21:- *As indicated earlier Section 17-B 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 the 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 Section 17-B 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 in *Visveswaraya Iron & Steel Ltd.* [(1994) 84 FJR 46 : (1994) 1 LLJ 555 (Kant)] or the Bombay High Court in *Carona Sahu Co. Ltd.* [(1995) 70 FLR 25 : (1994) 2 LLN 834 (Bom)]*

Para 23:- As regards the powers of the High Court and the Supreme Court under Articles 226 and 136 of the Constitution, it may be stated that Section 17-B, by conferring 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 the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not

refundable or recoverable in the event of the award being set aside, does not in any way preclude the High Court or the Supreme Court to pass an order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a direction would be dehors the provisions contained in Section 17-B and while giving the direction, the court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. [1987 Lab IC 1468 : (1987) 2 LLJ 210 : (1987) 1 LLN 695] that in exercise of the power under Articles 226 and 136 of the Constitution, an order can be passed denying the workman the benefit granted under Section 17-B. The conferment of such a right under Section 17-B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution.”

18. It has been held in the case of ***Rajeshar Mahto Vrs. Alok Kumar Gupta*** reported in **2018 4 SCC 349** at **Paragraph No.s 13, 18 and 19** as follows:

“Para 13:- The Corporation has filed its reply on affidavit. They have raised certain technical pleas but, in fact, have admitted that so far they have not paid any amount to the applicant in compliance with the order dated 4-5-1999. It is stated by the Corporation that they offered the sum to the applicant but he declined to accept the

same stating that what was offered to him was less as compared to his actual entitlement.

Para 18:- In the light of the aforementioned principle of law laid down by this Court, one cannot now dispute the legal proposition emerging therefrom that notwithstanding allowing of the appeal filed by the Corporation by this Court by order dated 31-10-2000, so far as order dated 4-5-1999 passed in the aforesaid appeal is concerned, it remains legal and valid and being independent in nature, the same has to be given effect to in favour of the applicant employee, if not found complied with by the employer Corporation.

Para 19:-In other words, even if the employer eventually succeeds in its appeal against his employee, in which such order was passed during the pendency of employer's appeal, the employer continues to remain under legal obligation to comply with such order passed by the Court under Section 17-B of the Act in favour of the employee. To put it in short, an order passed under Section 17-B of the Act does not merge with the final order passed in the appeal and being an independent order, it remains alive for enforcement."

19. It has been held in the case of **Dilip Mani Dubey v. Siel Ltd.** reported in **2019 (4) SCC 534** at **Paragraph 13** as follows:

“Para 13:- We, however, find that the High Court despite setting aside the award of the Industrial Tribunal, rightly directed that whatever amount, which has so far been paid to the appellant workman by Respondent 1 employer in compliance with the order passed under Section 17-B of the ID Act proceedings during pendency of the litigation, the same will not be recoverable from the appellant on the strength of the impugned order. According to the learned counsel for Respondent 1 employer, this amount is quite a substantial one and is more than Rupees two lakhs. Be that as it may.”

20. Thus, the object of Section 17-B of the Industrial Disputes Act is to give relief to the workman in whose favour an Award of reinstatement has been passed by the Labour Court and the said Award is under challenge in the High Court or the Hon’ble Supreme Court. The said relief has been given with a view to relieve the hardship that would be caused to a workman on account of delay in implementation of the Award as a result of the pendency of the proceedings in the High Court or the Hon’ble Supreme Court. The Supreme Court further held that the Parliament has thought it proper to grant an amount to the extent of wages, which were drawn by the Workman while he was in service and has used the word, “Full wages last drawn”.

21. Under the circumstances mentioned above and in view of the law laid down by the Hon’ble Supreme Court and also in view of the fact that the

petitioner has been terminated from the services on 05.12.2014 and despite the Award dated 22.6.2017 of reinstatement into service in his favour, neither the petitioner has been re-instated in service nor any back wages has been paid to him till date in the light of the Award dated 22.06.2017 and hence, this Court is inclined to direct the petitioner-Bank to pay full wages last drawn as per Section 17-B of the Industrial Disputes Act from the date of filing of I.A. No. 2668 of 2019, i.e. from 13.03.2019 for the present, within 30 days from the date of receipt of a copy of this order, till the final disposal of the present writ petition.

22. Thus, the order dated 24.7.2018 passed by a Co-ordinate Bench of this Court is vacated and the I.A. No. 2668 of 2019 filed by the Respondent is allowed and stands disposed of.

W.P.(L) No. 1544 of 2018

23. Put up this case after four weeks.

(Sanjay Prasad, J.)

s.m.