

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 16558/2021

Shree Rajasthan Syntex Ltd.

-----Petitioner

Versus

Chandrashekhar Sahu

-----Respondent

Connected With

1. S.B. Civil Writ Petition No. 7458/2009
 2. S.B. Civil Writ Petition No. 7459/2009
 3. S.B. Civil Writ Petition No. 8642/2009
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For Petitioner(s) : Mr. Shubhankar Johari

For Respondent(s) : Mr. J. Gehlot

JUSTICE DINESH MEHTA

Order

14/08/2023

I.A. No. 1/2023:

1. By way of the present application under Article 226(3) of the Constitution of India, the respondent workman has prayed that the interim order dated 09.12.2021 passed by the Court be vacated.
2. Mr. Gehlot, learned counsel for the applicant/respondent argued that by way of interim order dated 12.10.2011 passed in petitioner's earlier writ petition being S.B. Civil Writ Petition No. 7458/2009, a co-ordinate Bench of this Court had directed the petitioner company to pay the wages as per Section 17-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act of 1947') from the date of filing the application before this Court.
3. Learned counsel admitted the fact that the petitioner company has paid a sum of Rs.2,33,100/-, but pointed out that said amount was only for the period upto 20.01.2013, the date when the applicant-employee was taken back on duties. He

argued that as the petitioner company has thereafter not paid month to month wages to the applicant employee, in terms of the interim order dated 12.10.2011. He emphasized that the learned Labour Court has passed a just order, because the applicant-respondent is entitled to get monthly wages in terms of the above referred interim order of the High Court.

4. Mr. Shubhankar Johri, learned counsel for the petitioner company on the other hand submitted that the respondent's dues in terms of the order dated 12.10.2011 has admittedly been cleared; and after joining on 12.01.2013 and attending the duties for a few days, the respondent did not turn up to serve the petitioner company since 04.02.2013.

5. He argued that inspite of the fact that specific plea was raised before the Labour Court that the respondent had attended the office only for a few days up to 13.02.2013, whereafter he did not serve the petitioner company after 15.02.2013, his claim of wages after 15.02.2013, the date when he voluntarily abandoned the services was untenable, yet the learned Tribunal below has illegally passed impugned order dated 10.09.2021 directing the petitioner company to pay a sum of Rs.2,33,100/-.

6. Having heard learned counsel for the parties, this Court is of the prima-facie view that the matter requires consideration and interim order deserves to be continued.

7. The interim order dated 12.10.2011 and the provisions of Section 17-B of the Act of 1947 cannot be read in vacuum - they have to be considered in the factual matrix of the case.

8. Section 17-B of the Act of 1947 reads thus:

“17B. 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.”

9. The interim order dated 12.10.2011 passed by this Court is in two parts; (i) direction to comply the provisions of Section 17-B of the Act of 1947 within a period of one month and pay the wages as per Section 17-B of the Act of 1947. The petitioner company had taken the respondent-workman back on duties on 04.02.2013 and therefore, first part of the interim order stood complied with.

10. Second part of the interim order too has been complied with, inasmuch as the respondent-workman was paid a sum of Rs.2,33,100/- being the due amount of wages for the intervening period, upto the date he was taken back on duties. But for the reasons best known, the respondent himself had chosen not to discharge duties, hence he cannot claim monthly wages, despite remaining absent.

11. Section 17-B of the Act of 1947 in expressed terms provides that an employee shall be entitled for the wages last drawn “if he had not been employed in any establishment”. Any establishment

would include the establishment where the respondent workman had been working. Since the respondent-applicant was allowed to join and it was his choice of abandoning the services, he cannot claim any wages during the pendency of the petition. If the applicant's stand is accepted, every workman would get and continue to get full wages last drawn, even without serving the employer. Such interpretation would not only be contrary to legislative intent but would also be unjust and inequitable and would be like giving premium for not working.

12. While keeping the issue as to whether the respondent-workman voluntarily abandoned the services after the date 15.02.2013 or not, is a matter to be examined in the writ petition so also the respondent's entitlement out of the order impugned. If the interim order is vacated and the petitioner company is asked to pay the amount in question, it will be difficult nay impossible to recover the same (if the writ petition is ultimately allowed) from a workman like the respondent, who chose not to serve the petitioner company. The application under Article 226(3) of the Constitution is, however, rejected for the foregoing reasons.

S.B. Civil Misc. Stay Application No. 16239/2021:

1. Heard on stay application.
2. Interim order passed by this Court on 09.12.2021 is hereby confirmed to last till disposal of the writ petition.
3. Stay application stands disposed of, accordingly.

(DINESH MEHTA),J