

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7359 OF 2013
(arising out of S.L.P. (Civil) No. 18252 of 2012)

ANIL KUMAR

Appellant(s)

VERSUS

STATE BANK OF PATIALA

Respondent(s)

O R D E R

Leave granted.

2. The Division Bench of the High Court has undertaken the exercise in the intra-court appeal from the order passed by the single Judge under Section 17B of the Industrial Disputes Act, 1947 (for short, 'ID Act') beyond the scope of Section 17B.

3. Section 17B of the ID Act reads as follows :-

"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:

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."

4. The labour court in its award dated 16.04.2007 in the industrial dispute raised by the appellant-workman has, as a matter of fact, recorded that workman was engaged as Peon by the management of the respondent-Bank as a daily wager; he had worked regularly from 16.04.1990 to 21.12.1992, and the workman had completed 240 days in 1991 and 1992. The Labour Court, accordingly, held that the termination of the workman by the management vide order dated 22.12.1992 was illegal and directed the management to reinstate the workman along with 10% back wages within two months from the date of publication of the award.

5. The award has been challenged by the respondent-Bank in the Writ Petition before the High Court. In the above proceedings, the workman made an application under Section 17B of the ID Act. This application came to be allowed by the single Judge on 30.08.2011. The single Judge in his order held as follows :-

"Hence, in the light of the above, the application is allowed and the petitioner management is directed to pay to the respondent the last drawn wages or the minimum wages, whichever are higher, from the date of passing of the award till the final disposal of the petition. The arrears of wages shall be released to the respondent within four weeks. The petitioner management shall continue to pay to the respondent the said wages on month to month basis, on or before the 7th day of each English calendar month. The respondent/applicant is also directed to give an undertaking with an advance copy to the counsel for the petitioner management to the effect, that in case the petitioner management ultimately succeeds in the writ petition, he shall refund/repay the difference of amount of last drawn wages and the minimum wages. The respondent shall also furnish his latest address in the said undertaking. The undertaking be filed by the respondent/applicant within three weeks from the date of this order."

6. The order of the single Judge was challenged by the respondent in the intra-court appeal. The Division Bench of that Court allowed the appeal, set aside the order of the single Judge and observed that Writ Petition may be heard expeditiously.

7. The view of the Division Bench of the High Court is clearly wrong. The Division Bench has not taken into consideration the objective of Section 17B of the ID Act. It has gone into the question of relationship of employer and employee while dealing with an order passed under Section 17B which it was not competent to do.

8. The single Judge was justified in observing that the management shall pay to the workman the last drawn wages or the minimum wages, whichever are higher, from the date of passing of the award till the final disposal of the writ petition. Even if it is assumed that the proof of the quantum of wages has not been surfaced from the record as observed by the Division Bench, the workman cannot be deprived of the minimum wages fixed by the competent authority.

9. The impugned order is, accordingly, set aside and the order dated 30.08.2011 passed by the single Judge is restored. The compliance of the order passed by the single Judge shall be made by the respondent-Bank within four weeks from today.

10. Appeal is allowed but with no order as to costs.

.....J.
(R.M. LODHA)

NEW DELHI;J.
SEPTEMBER 2, 2013 (MADAN B. LOKUR)

ITEM NO.55 COURT NO.3 SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).18252/2012

(From the judgement and order dated 28/02/2012 in LPA No.1005/2011 of The HIGH COURT OF DELHI AT N. DELHI)

ANIL KUMAR Petitioner(s)

VERSUS

STATE BANK OF PATIALA Respondent(s)

(With prayer for interim relief and office report)

Date: 02/09/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Petitioner(s) Mr. Mahabir Singh Mangla, Adv.
Mr. Vipin Mohan, Adv. for
Mr. Rameshwar Prasad Goyal, Adv.

For Respondent(s) Mr. Sanjay Kapur, Adv.
Mr. Rajiv Kapur, Adv.
Ms. Vatsla Rai, Adv.
Ms. Lekha Viswanath, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
Appeal is allowed in terms of the signed order.

|(Rajesh Dham)
|Court Master

|(Renu Diwan)
|Court Master

(signed order is placed on the file)