

ITEM NO.3

COURT NO.5

Corrected
SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).
16751-16752/2011

AIRPORTS AUTHORITY OF INDIA

Petitioner(s)

VERSUS

INDIAN AIRPORTS EMPLOYEES' UNION & ANR.
(with office report)

Respondent(s)

Date : 02/09/2014 These petitions were called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA
HON'BLE MR. JUSTICE PRAFULLA CHANDRA PANT

For Petitioner(s)

Mr. Lalit Bhasin, Adv.
Ms. Nina Gupta, Adv.
Mr. P. V. Yogeswaran, Adv.

For Respondent(s)

Mr. Bharat Sangal, Adv.

UPON hearing the counsel the Court made the following
Yogeswaran

O R D E R

Leave granted.

The appeals stand disposed of in terms of signed order.

(Neeta)
Sr. P.A.

(Signed order is placed on the file)

(Usha Sharma)
COURT MASTER

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8421-8422 OF 2014
(Arising out of SLP(C) Nos. 16751-16752 of 2011)

AIRPORTS AUTHORITY OF INDIA

Appellant(s)

VERSUS

INDIAN AIRPORTS EMPLOYEES' UNION & ANR.

Respondent(s)

O R D E R

Leave granted.

These appeals have been preferred by appellant - Airport Authority of India against the order dated 27th April, 2011 passed by the Division Bench of the High Court of Judicature at Bombay in Notice of Motion No. 1133 of 2011 in Appeal No. 223 of 2011 etc. and the order dated 10th June, 2011 passed by the Division Bench of the Bombay High Court in Notice of Motion No. 1133 of 2011 in Appeal No. 223 of 2011.

By the impugned order dated 27th April, 2011, the Division Bench of the High Court observed as follows:

"2 Having heard the learned counsel for the parties and having perused the office note dated 3rd April, 2007 at Page 146, the award of the Industrial Tribunal and the impugned order of the learned Single Judge, we are of the prima facie view that the petitioners are entitled to protection under Section 17B of the Industrial Disputes Act, 1947. Therefore, we direct respondent No.1 to pay the wages to the loaders/workers in Electrical Maintenance Department against whom Office Note dated 3rd April, 2007 was issued under Section 17B of the Act. The wages which were last drawn by the concerned loaders/workers in Electrical Maintenance Department prior to the date of

termination i.e. Office Note dated 3rd April, 2007 and the arrears payable on the aforesaid basis for the period upto 30th April, 2011 shall be paid to the concerned workers within one month from today and thereafter they shall be continued to be paid for every month on or before 10th day of succeeding month."

By subsequent order dated 10th June, 2011, the time was extended up to 30th June, 2011.

The impugned orders have been assailed by appellant mainly on the ground that in the absence of order of re-instatement, the Division Bench of the High Court was not justified in invoking Section 17 B of the Industrial Disputes Act, 1947 by way of interim order.

On the other hand, according to the respondents - workmen, in absence of any order of stay passed by the High Court, Airport Authority of India is liable to follow the impugned Award.

The factual matrix of the case is as follows:

The Government of India, Ministry of Labour by its Order No. L-11015/2/2003-IR(M) dated 7th March, 2003 & L-11015/2/2003-IR (Misc) dated 9.10.2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following issues to the Central Government Industrial Tribunal No. 2 Mumbai.

"1. Whether the contract between Airport Authority of India and the respondents contractors, is a sham and bogus and is a camouflage to deprive the workers concerned in the petition of benefits available to permanent

workmen of Airport Authority of India?

2. Whether the workers concerned in the petition should be declared as permanent workers of Airport Authority of India?

3. What are the wages and consequential benefits to be paid to the workers concerned in the petition?"

The Tribunal by its Award dated 26th May, 2008 answered the reference in favour of the workmen and against the Airport Authority of India. It was held that the workmen concerned should be declared as workmen of Airport Authority of India and shall be entitled for wages and consequential benefits.

The said Award was challenged by appellant - Airport Authority of India before the High Court by filing Writ Petition No. 109 of 2009 and Writ Petition No. 123 of 2009. In the said case, the learned Single Judge by order dated 24th February, 2009 issued Rule on interim relief, returnable on 17th March, 2009. Against the said order, the respondents - Indian Airports Employees' Union & Anr. moved an appeal before the Division Bench of the High Court (in Appeal No. 223 of 2011) and therein notice of motion was taken and impugned order was passed by the Division Bench on 27th April, 2011.

In the present case as we find that there is no order of re-instatement passed by the Tribunal, we agree with the submission made by learned counsel for the appellant that in absence of any order of re-instatement the High Court wrongly observed that workmen are entitled for wages under Section 17 B of the

Industrial Dispute Act, 1947. However, on that ground, if the impugned order dated 27th April, 2011 is set aside, the consequential effect will be that the appellant will have to implement the award in absence of any stay for more than 5 ½ years. In such case the Indian Airport Authority would be liable to give effect to the impugned award, treat the workmen as permanent employees and will have to pay the salary to which regular employees are entitled from the date of the Award.

For reasons aforesaid and in the facts and circumstances of the case, we set aside the impugned orders dated 27th April, 2011 and 10th June, 2011 passed by the Division Bench of High Court and direct the appellant to pay the workmen the wages which they are entitled as revised from time to time from the date of the award till the High Court decides the Writ Petition No. 109 of 2009 and Writ Petition No. 123 of 2009. The arrear should be paid within two months. Month to month wages be paid on or before 7th day of the subsequent month. It is open to the appellant to withdraw the amount deposited with the High Court to pay the dues to the workmen.

In view of interim order as ordered above, the order dated 24th February, 2009 passed by learned Single Judge in Writ Petition No. 109 of 2009 and Writ Petition No. 123 of 2009, so far as it relates to Rule on interim relief and the order passed by Division Bench is modified to the extent above. The High Court is expected to decide the writ petitions on an early date preferably within six months.

The appeals stand disposed of with aforesaid observations.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(PRAFULLA CHANDRA PANT)

NEW DELHI ;
SEPTEMBER 02, 2014