

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2335 OF 2013
IN
WRIT PETITION NO.1399 OF 2008**

Kirloskar Pneumatic Kamgar
Sangh

Applicant

Vs

Kirloskar Pneumatic Company
Ltd

.. Respondent

Mr. Nitin Kulkarni, Advocate for applicant.

Mr. Kiran Bapat i/b M/s Sanjay Udeshi & Co., Advocate for
Respondent .

CORAM : R.G.KETKAR,J.
DATE : 10/02/2015

PC:

1. Heard Mr. Nitin Kulkarni, learned counsel for the applicant and Mr. Kiran Bapat, learned counsel for respondent at length.
2. Rule. Mr. Kiran Bapat waives service on behalf of the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.
3. By this Application, the applicant-respondent in the petition has sought direction against the oppoent-original petitioner company to pay the wages to him as per the provisions of section 17-B of the Industrail Disputes Act, 1947 (for short, "Act") with effect from 1.8.2010.
4. Mr. Kulkarni submitted that by the Judgment and Award

dated 13.12.2007, the learned Member, Industrial Tribunal, Pune (for short, "Tribunal") held that the termination of the applicant on 28.1.2002 is in violation of the provisions of law and accordingly quashed and set aside. The opponent-company herein was directed to reinstate the employee shown in Annexure- A to the reference, namely the applicant herein, amongst others, with continuity of service but without back wages within a period of three months from the date of publication of Award. Aggrieved by this decision, the opponent company instituted the above Writ Petition. The petition was admitted on 3.3.2008. As far as interim relief is concerned, by order dated 21.1.2009 the impugned Award was stayed, during the pendency of the petition. The applicant has, therefore, taken out this application on or about 10.10.2010.

5. Mr. Kulkarni submitted that in view of Section 17-B of the Act, as the order of reinstatement passed by the Tribunal is stayed by this Court the applicant is entitled to full wages last drawn by him inclusive of any maintenance allowance admissible to him under any rule if he had not been employed in any establishment during such period. He submitted that between 2008 and 31.7.2010 the applicant was gainfully employed. He, therefore, submitted that appropriate direction may be given to opponent company to pay wages as per Section 17-B from 1.8.2010.

6. On the other hand, Mr Bapat submitted that though the application claiming benefit of Section 17-B was filed on or about 10.10.2010, for the first time, the Court was moved on 1.10.2013. He submitted that on 25.11.2013 the opponent company had offered him alternate employment through contractor. He also invited my attention to various orders passed by this Court in the above application and submitted that as per the offer made by the opponent company, the applicant did not join duties. Mr. Bapat further states that the applicant is paid wages from 1.8.2014 till date. He is not entitled to claim wages between 1.8.2010 and 31.7.2014. Upon taking instructions from Mr Ganesh Chaudhari, Factory Manager of the opponent company, the applicant will be allowed to work on sheet laser cutting machine and conventional drilling machine in M/s.Sumeet Corporation Pvt Ltd at Chakan. He will be paid Rs.11,168/- CTC per month. After deductions, the applicant will be paid Rs.8603/- per month.

7. Mr. Kulkarni submits that the applicant may be given proper and sufficient training before asking him to operate these machines. He submits that 15 days training for these two machines, viz. sheet laser Cutting machine and conventional drilling machine, will be proper and sufficient. In view thereof, the application is disposed of in the following terms:

8. The applicant will start working on these two machines, viz.

sheet laser cutting machine and conventional drilling machine, from 16.2.2015. M/s. Sumeet Corporation Pvt Ltd shall give 15 days training to the applicant for operating these two machines. The applicant will work on these machines without any excuse. The applicant will be paid Rs. 11168/- CTC per month. In other words, the applicant will be paid Rs.8603/- per month in hand.

9. The question of entitlement of the applicant for wages under section 17-B for the period from 1.8.2010 till 31.7.2014 is kept open for agitating the same at the time of disposal of the petition. The statement made by the applicant that he will not instigate any worker in paragraph 7 of the additional affidavit dated 3.2.2015, is accepted in the form of undertaking.

Rule is made absolute in the above terms with no order as to costs.

(R.G.KETKAR, J.)