

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application No.500 of 2014

In

Writ Petition No.6128 of 2012

Along with

Writ Petition No.996 of 2011

(Sub-Area Manager, Western Coalfields Limited, Nagpur v. The General
Secretary, Lal Zenda Coal Mines Union)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri A.S. Mehadia, Advocate for Petitioner.

Shri D.P. Shouche, Advocate for Respondent.

Coram : R.K. Deshpande, J.

Date of Reserving the Order : 10-2-2015.

Date of Pronouncing the Order : 24-2-2015.

Both these petitions were admitted on 2-5-2011 and 14-1-2013 and the award passed by the Labour Court granting reinstatement with 25% of back wages with continuity in service after setting aside the order of dismissal, has been stayed.

On 19-6-2013, this Court allowed Civil Application No.1716 of 2013 filed under Section 17-B of the Industrial Disputes Act, 1947 ("the said Act") as under :

“ *Application under Section 17B of the Industrial*

Disputes Act is allowed. Payment be made within four weeks from today. On accepting said payment, writ petition shall be heard finally on next date.

Stand over to 22.10.2013.”

This is the second application moved under Section 17-B of the said Act for issuance of the direction to the employer to pay the minimum wages payable to the lowest paid employee under the 9th National Coal Wage Agreement. This application is opposed by the employer on the ground that once the application under Section 17-B of the said Act has been allowed on 19-9-2013, the second application is not maintainable. It is urged by the employer that the employee is being paid at the rate of Rs.1,400/- per month, which was his full last drawn wages at the time of his dismissal from service, which were over and above the then minimum wages prescribed under the Minimum Wages Act, 1948. He submits that the agreement referred to by the Union cannot be implemented at an interim stage.

A bare perusal of the order dated 19-9-2013 passed by this Court reveals that an application under Section 17-B of the said Act has been allowed. The second application is nothing but seeking the clarification of the earlier order, which nowhere prescribes the full wages last drawn by the employee. The contention that the second application is not tenable, is rejected.

In the decision of the Apex Court in the case of *Dena Bank v. Kiritkumjar T. Patel*, reported in (1999) 2 SCC 106, in the similar facts of the case, the Apex Court has held that the words “full wages last drawn” must be given their plain and material meaning and they cannot be given an extended meaning as given by the Karnataka High Court in *Visveswaraya Iron and Steel Ltd. v. M. Chandrappa* [(1994) 1 LLJ 555], or the Bombay High Court

in *Carona Sahu Co. Ltd. v. A.K. Munafkhan* [(1994) 2 LLN 834]. It has been held that the Parliament has used the words “full wages last drawn” indicating that the wages that were actually paid and not the amount that would be payable are required to be paid. In view of this decision, it is not possible to hold that “full wages last drawn” means the wages, which are being paid to the similarly situated employees on the date of passing of an award or an order under Section 17-B of the said Act.

Be that as it may. In para 23 of the decision of the Apex Court in *Dena Bank v. Kiritkumar T. Patel*, cited supra, it has been held as under :

“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) 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.”

The Apex Court has held that conferment of such right under Section 17-B of the said Act cannot be regarded as restriction on the powers of the High Court or the Supreme Court under Article 226 or 136 of the Constitution of India.

The Minimum Wages Act, 1949 is the labour welfare legislation. The minimum rate of wages prescribed therein is co-related with the cost of living index. It is the wage to sustain, which is fixed in exercise of the powers conferred on the appropriate Government under Section 3 of the said Act. Section 12 therein creates an obligation upon the employer to pay every employee engaged in a scheduled employment under him the wages at a rate not less than the minimum rate of wages fixed by such notification. Section 22 therein provides for penalty for paying to any employee less than the minimum rate of wages fixed under the provisions of the Act. It provides for punishment with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both. It is not in dispute in the present case that the rates of minimum wages under the said Act are fixed by the appropriate Government in respect of the employment in question. In view of this, the Court is competent to pass an order to pay the employee the minimum wages, though full wages last drawn by him are less than the minimum wages prescribed in the notification. In the interest of justice, therefore, I think it proper that the employee should be paid the minimum wages, as are fixed and revised under the provisions of the Minimum Wages Act from time to time during the pendency of this petition.

In view of above, the following order is passed :

The petitioner-employer is directed to pay the employee the minimum wages, as are fixed and revised under the provisions of the Minimum Wages Act, 1948 from time to time, during the pendency of these petitions, from the date of passing of the award. The arrears, if any, be paid within a period of eight weeks from today.

JUDGE.

Lanjewar