

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WA.No. 1873 of 2014 () IN WP(C).32138/2013

AGAINST THE ORDER IN I.A.NO.11217/2014 IN WP(C) 32138/2013
of HIGH COURT OF KERALA DATED 21.11.2014

APPELLANT(S)/PETITIONER:

SURESH KUMAR K. AGED 42 YEARS
S/O.NEELAKANTAN, KOTTAPARAMBATH HOUSE
POST KUNDUPARAMBA, (VIA) MAVOOR, KOZHIKODE DISTRICT.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S)/RESPONDENTS:

1. GANESH
S/O.BALAN, AGED 40 YEARS, PROPRIETOR, U.T.UNITED TRAVELS
APM COMPLEX, TIRUR, MALAPPURAM DISTRICT.
2. THE LABOUR COURT, KOZHIKODE
3. THE DISTRICT LABOUR OFFICER,
CIVIL STATION, KOZHIKODE, PIN: 673 020.

R BY SRI. JOBY JOSEPH - GOVERNMENT PLEADER
R BY SRI.C.M.MOHAMMED IQUBAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
29-01-2015, ALONG WITH WA. 1921/2014, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

acd

'C.R.'

V.K. MOHANAN & P.D. RAJAN, JJ.

Writ Appeal Nos. 1873/2014 & 1921/2014

Dated this the 29th day of January, 2015

JUDGMENT

V.K.Mohanana,J.

As the above two appeals are arising out of one and the same order dated 21.11.104 of the learned single Judge in I.A.No.11217/2014 in W.P.(C) No.32138/2013 and particularly, the question of law and the facts are identical, the above appeals are heard together and being disposed of by this common judgment.

2. Writ Appeal No.1873/2014 is preferred at the instance of the workman, who is the 1st respondent in W.P.(C) No.32138/2013 and the petitioner in I.A.No.11217/2014 in the above writ petition; whereas W.A.No.1921/2014 is preferred by the management, who is the petitioner in the

writ petition as well as the respondent in I.A.No.11217/2014. Short facts, which led to the impugned order are as follows:

3. The appellants in W.A.No.1873/2014 and W.A.No.1921/2014 are respectively the workman and the management. For the convenience, herein after they are referred to as the workman and management accordingly. A dispute arose between the workman and the management, which was brought to the Labour Court, Kozhikode under sub section 2 of Section 2A of the Industrial Dispute Act, 1947 (hereinafter referred for short as 'I.D. Act' only). According to the workman, he was an employee under the management and his service was commenced in January 2004. It is alleged by the workman that the management denied employment to him in

contravention of the basic principles of natural justice and when an attempt for an amicable settlement was failed, he made an application before the District Labour Officer, Kozhikode for initiation of conciliation proceedings in the above dispute, which was also not materialised and thereafter, in accordance with the procedure, the workman filed industrial dispute before the Labour Court with the prayers to reinstate him in service of the management with continuity of service and all attendant benefits. It appears that the Labour Court observed that though notice was served on the management, they failed to contest the industrial dispute, accordingly, they were set ex parte and finally an award was passed, which was produced as Ext.P2 before the learned single Judge. As per the award dated 22.12.2012 in I.D.No.42/2012, the

Labour Court, Kozhikode held that the denial of employment to the workman by the management is unjustifiable and accordingly, the same was set aside. Consequently, the management was directed to reinstate the workman in their service as such with continuity of service with effect from 10.8.2010, within 30 days from the date of pronouncement of the award. It was also declared that the workman will be entitled to get all arrears of wages from the management and continuity of service with effect from 10.08.2010 till he is reinstated in the service of the management and on failure of the management to comply with the above directions contained in the award within the stipulated time, it was also declared that the workman will have every right to realise the arrears of wages and all monetary benefits from the

management as per law.

4. Aggrieved by the above award, the management approached this Court on 19-12-2013 by filing W.P.(C) No.32138/2013. During the pendency of the above writ petition, the workman, who is the 1st respondent in the above writ petition, preferred I.A.No.11217/2014 under Section 17B of the I.D. Act. The learned Single Judge, after hearing the workman and the management, passed the impugned order and while extending the right of the workman to have the backwages, it was specifically directed that the backwages shall be paid prospectively under Section 17B of the I.D. Act at the rate of last wages drawn from November, 2014 onwards. Aggrieved by the above rider, by which the benefit was restricted to the workman only prospectively, the workman filed

W.A.No.1873/2014 against the said order.

5. Whereas the management fully aggrieved by the order of the learned single Judge preferred the above referred writ appeal contending that the so called workman is not coming under the definition of Section 2(s) of I.D. Act and therefore, the Labour Court as well as the learned single Judge are wrong in extending the benefit under the I.D. Act in favour of the workman. It is also contended that the 1st respondent workman obtained Ext.P2 award by playing fraud on the Labour Court and in order to substantiate the above contention, it is also pointed out that notice in I.D. No.42/2012 of Labour Court was not actually served on the management, instead of that it was served in the address of a closed firm.

6. We heard Adv.Sri.Salil Narayanan, the learned

counsel appearing for the appellant in W.A.No.1873/2014 preferred by the workman and Sri. C.M. Mohammed Iquabal, the learned counsel for the appellant in W.A.No.1921/2014 preferred by the management.

7. Sri. Salil Narayanan, the learned counsel appearing for the workman, on the strength of the Full Bench decision of this Court reported in South India Workers Congress (INTUC-I) v. Sree Sankara University of Sanskrit [2009(4) KLT 12], submitted that the workman is entitled to get the backwages under Section 17B of the I.D. Act retrospectively atleast from the date of filing of the writ petition or the affidavit therein. But, the learned single Judge, without considering the above settled legal position, though allowed the backwages, ordered to pay only prospectively.

8. On the other hand, Sri. C. M. Mohammed Iqbal, the learned counsel for the management contended that Sri. Suresh Kumar.K., the appellant in W.A.No.1873/2014 is not a workman at all and therefore, the Labour Court has no jurisdiction to entertain such case and to pass such an award. It is also the contention of the learned counsel that the workman committed fraud on the Labour Court and managed to obtain Ext.P2 award. Therefore, the learned single Judge is not justified in passing the impugned order granting backwages in favour of the workman, even if its operation is restricted to prospectively.

9. We have carefully considered the rival contentions and submissions made at the Bar, by the counsel for the appellants. We have perused the available

materials.

10. In the light of the available materials and the rival contentions, the only question to be considered is whether the order of the learned single Judge is correct in allowing the petition u/s.17B of the I. D. Act; if so, is it justified in limiting the payment of backwages for the workman only prospectively?

11. Section 17B of the I.D. Act, 1947 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."

12. The learned counsel appearing for the management vehemently submitted that the award itself was obtained by the workman by playing fraud on the Court namely, the Labour Court and therefore, the management was incapacitated to raise the contention that he is not a person coming under the definition of Section 2(s) and thus the 1st respondent being not a workman, is not entitled to invoke Section 17B of the I.D. Act. The above contentions, according to us, are devoid of any merit. The High Court or the Supreme Court, as the case may be, if

the challenge is at the instance of the management against the award or judgment, whereby it is directed the management to reinstate the workman, the appropriate Court can pass an order under Section 17B of the I.D. Act, on its satisfaction of the twin conditions envisaged by Section 17B of the I.D. Act. So, at the time of consideration of the application under Section 17B of the I.D. Act, what is to be considered is, whether there is a direction in the award under challenge to reinstate the workman and further, whether the workman has been employed in any establishment during such period. The very title of Section 17B itself reads as 'payment of full wages to workman pending proceedings in higher courts.' The above title of the Section serves as a Keynote to the substance of the Section. On a close reading of Section

17B would further reveals that, in case the workman, who is ordered to be reinstated by the Labour Court or the Tribunal or National Tribunal by its award against the employer, preferred any proceedings in a High court or the Supreme Court, on an application of such workman, the employer or the management 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. At this juncture, it is also relevant to note that Section 17B is one of the welfare measures, incorporated in the I.D. Act to financially save the workers, who are undergoing victimization or harassment from the part of the management by denying employment and wages, even after an order in favour of the workman from a competent fact finding Court or

Authority. It is also clear from the above provision that duty to pay backwages in such a situation is independent of the outcome of the challenge before the higher courts and irrespective of the merit of the challenge or contention raised by the management. That means, even if ultimately in such a proceedings, it is found that the order of the Labour Court or the Tribunal or National Tribunal is incorrect or illegal, the backwages paid under Section 17B of the I.D. Act could not be recovered by the management, as the said welfare measure is the outcome of the special provision incorporated by the Legislature to save the interest of the workmen especially in the absence of any clause in the said Section to that effect. So, the contention of the learned counsel appearing for the management that if the backwages as ordered by the

impugned order are paid and finally the appeal is allowed in favour of the management, the said amount could not be recovered, is without any basis and therefore, we do not find any merit on such contention. In the present case also, the learned single Judge has found that the workman is entitled to get the backwages.

13. As we have already indicated, the management has advanced several contentions before us questioning the correctness and legality of the award passed by the Labour Court, but we are not supposed to be gone into the correctness of such contentions, since the main matter is pending before the learned single Judge. In view of the specific provision incorporated under Section 17B of the I.D. Act and as long as Ext.P2 award contained a direction to pay backwages to the workman and the workman has

not been employed in any establishment, as evidenced by the affidavit filed, an order under Section 17B of I.D. Act can be issued notwithstanding the contention put forward by the management against the award, and therefore, according to us, this Court need not consider those contentions at this stage. Thus, we are of the view that there is no merit in the contentions raised by the management against the order impugned in their appeal.

14. Another alternative contention advanced by the learned counsel for the management is that even if the order to pay backwages is admitted as correct for argument's sake, the workman is not entitled to get the backwages with retrospective effect and in support of the above submission, the learned counsel for the management placed reliance on the decision reported in Uttaranchal

Forest Development Corpn. And another v. K.B. Singh and others [2005 KHC 2015]. In the above decision, the Honourable Supreme Court, in paragraph 3 has held that "we direct that only such workman in whose favour there are awards of reinstatement and who have filed affidavits of their not being in gainful employment, shall be entitled to be granted reinstatement or in lieu thereof paid wages last drawn by them on respective dates of their terminations from services. Their entitlement for such wages would be from the respective dates by filing affidavits by each of them in this Court in compliance with S.17B of the Industrial Disputes Act, 1947." We are of the view that the above decision is not helpful for the management to deny wages under Section 17B of the I.D. Act from the date of filing the writ petition. At this

junction, it is relevant to note that by Ext.P2 award, the management was directed to reinstate the workman and against the said award, the management had preferred W.P.(C)No.32138/2013. Thus, even though Ext.P2 award is dated 22.12.2012, the workman is neither reinstated nor his backwages are paid. Thereby, the management denied the benefit of Ext.P2 award. It goes without saying and particularly in view of Ext.P2 award that the workman has been placed under disciplinary proceedings and he was kept out of service. Ultimately, there arose a dispute, which found in favour of the workman as per Ext.P2 award. The management, instead of complying with the above directions issued in Ext.P2 award, approached this Court and the said writ petition is pending before this Court. The Legislature in its wisdom, incorporated Section 17B in

the I.D. Act so as to save the workman, like the employee in the present case, thereby to ensure the last drawn wages to the workman. The benefit of such welfare provision, which contained in the I.D. Act, cannot be denied to the workman or its benefit cannot be limited only prospectively, since it will amount to defeat the very intention of the legislature in engrafting such welfare measure in favour of the workman.

15. At this juncture, it is relevant to note that in the Full Bench decision in South India Workers Congress (supra), this Court has held as follows:

"Going by the said decision, it would appear that the workman concerned is entitled to get wages under S.17B of the ID Act from the date of the award of the Industrial Tribunal or the Labour Court, as the case may be. We notice that in that case also, the point-which should be the date from which the payment of backwages should be made was not specifically raised or considered. Going by the provisions

of S.17B of the ID Act, which we have already quoted above, we feel that the Parliament has taken care to ensure payment of last drawn wages to employees, who are unemployed during the pendency of the challenge against the award before a High Court or the Supreme Court. While answering the reference, it is unnecessary to consider whether the workmen are entitled to get wages from an anterior date, prior to the institution of the proceedings before this Court. That is, we are leaving open the point whether the workmen are entitled to get wages from the date of the award." [emphasis supplied]

After referring the decision cited supra, the Full Bench has further held as follows:

"4. On a scrutiny of the provisions of S.17B of the ID Act, as stated by the Division Bench, which referred the matter to the Full Bench, we have no doubt in our mind that, if the workman is unemployed, he is entitled to get the last drawn wages, from the date of institution of the writ petition before this Court. When the words of the provision are plain and they admit no ambiguity, we are bound to give effect to the words employed by the Legislature. Therefore, we declare that the unemployed workman is entitled to get wages under S.17B of the ID Act from the date of filing of the writ petition.

provided he is able to satisfy the Court by filing an affidavit that, he was unemployed from the date of institution of the proceedings. The reference is answered accordingly. In the result, the impugned orders of the learned single Judge are modified and it is ordered that the workmen concerned in this appeal are entitled to get wages under S.17B, from the date of filing of the writ petition by the first respondent herein, challenging Ext.P14 award." [emphasis supplied]

Thus, in view of the finding of the Full Bench decision, it can be seen that in the decision relied on by the management in **Uttaranchal Forest Development Corpn.** (supra), the point, which should be the date from which the payment of backwages should be made, was not specifically raised for consideration. Following the Full Bench decision, we are of the view that the workman herein is entitled to get wages under Section 17B of the Industrial Disputes Act from the date of filing of the writ petition, especially when he had already filed an affidavit in support of

I.A.No.11217/2014 upon which the impugned order is issued.

16. On a close reading of Section 17B, it can be seen that the legislature had not intended to impose any restriction or rider in extending the above benevolent provision in favour of the workman. Going by the order of the learned single Judge, we fail to understand the reason for not extending benefit of payment of the backwages from the date of the filing of the writ petition in this Court, especially when the Full Bench decision declared that the workman is entitled to get backwages from the date of filing of the writ petition. In the Industrial Disputes Act, being a welfare legislation, Section 17B, a benevolent provision is incorporated aiming to render financial assistance to the workman, who had been kept

away from the service and denied wages. So, the Court must be generous while interpreting such labour friendly legislation and extending the benefit to such workman.

17. However, the above approach of the learned single Judge, restricting the benefit prospectively under Section 17B of I.D. Act, cannot be approved, since we are of the view that the said approach will fall within the phenomenon of "shifting Courts' approach on the ground of globalisation and liberalization". When the labour classes in this country are voicing against globalisation and liberalization, stating that they are the prey of new globalisation and liberalization policy, the Courts in India, according to us, as pointed out by the Honourable Apex Court in the decision reported in Harjinder Singh v. Punjab State Warehousing Corporation [AIR 2010 SC 116], must be

compatible with constitutional philosophy of which Directive Principles of State Policy constitute an integral part. In paragraph 20 of the judgment delivered by His Lordship Mr. Justice G.S. Singhvi, it is held as follows:

".....The State is obliged to provide working facilities to reach minimum standard of health, economic security and civilized living. The principle laid down by this law requires courts to ensure that a workman who has not been found guilty cannot be deprived of what he is entitled to get. Obviously when a workman has been illegally deprived of his device then that is misconduct on the part of the employer and employer cannot possibly be permitted to deprive a person of what is due to him." [Emphasis supplied]

It is also held by His Lordship in paragraph 21 of the above decision as follows:

".....Where large number of people are unemployed and it is extremely difficult to find employment, an employee who is discharged from service might have to remain without means of subsistence for a considerably long time and damages in the shape of wages for a certain period may not be an adequate compensation to the employee for non-employment. In other

words, damages would be a poor substitute for reinstatement." [Emphasis supplied]

Besides the above, His Lordship Mr. Justice Ashok Kumar

Ganguly, in his concurring judgment held as follows:

"43. I am in entire agreement with the aforesaid view and I share the anxiety of my Lord Brother Justice Singhvi about a disturbing contrary trend which is discernible in recent times and which is sought to be justified in the name of globalisation and liberalization of economy.

44. I am of the view that any attempt to dilute the constitutional imperatives in order to promote the so-called trends of "Globalisation", may result in precarious consequences. Reports of suicidal deaths of farmers in thousands from all over the country along with escalation of terrorism throw dangerous signal. Here, if we may remember Tagore who several decades ago, in a slightly different context spoke of eventualities which may visit us in our mad rush to ape western ways of life. Here if I may quote the immortal words of Tagore:

"We have for over a century been dragged by the prosperous West behind its chariot, choked by the dust, deafened by the noise, humbled by our own helplessness and overwhelmed by the speed. We agreed to acknowledge that this chariot drive was progress, and the progress was civilization. If we ever ventured to ask "progress toward what, and progress for whom",

it was considered to be peculiarly and ridiculously oriental to entertain such ideas about the absoluteness of progress. Of late, a voice has come to us to take count not only of the scientific perfection of the chariot but of the depth of the ditches lying in its path."

45. How stunningly relevant are these words and how deep are the ditches created in our society by the so-called advance of globalization.

46. At this critical juncture the judges' duty, to my mind, is to uphold the constitutional focus on social justice without being in any way misled by glitz and glare of globalization." [Emphasis supplied]

18. Thus, for the aforesaid reasons and in the light of the above decision, we are unable to approve the direction of the learned single Judge restricting the right of the workman for backwages only prospectively. So, while upholding the order of the learned single Judge that the workman is entitled to get backwages under Section 17B, that portion of the impugned order of the learned single Judge, by which the learned single Judge restricted

the backwages to the workman only prospectively, under Section 17B, is set aside and made clear that the workman, the appellant in W.A.No.1873/2014 is entitled to get backwages under Section 17B at the rate of last wages drawn from November 2014 onwards from the date of filing of the writ petition by the management, i.e., from 19th December 2013 and the management is accordingly directed to pay the backwages to the workman.

Subject to the above direction and modification, with respect to the impugned order, Writ Appeal No.1873/2014 is disposed of whereas Writ Appeal No.1921/2014 stands dismissed.

V.K. MOHANAN, JUDGE.

P.D. RAJAN, JUDGE.

acd

