

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 645 OF 2017

IN

WRIT PETITION NO. 575 OF 2017

VISHWANATH HARMALKAR., ... Applicant

Versus

CG POWER AND INDUSTRIAL SOLUTIONS
LTD. KNOWS AS CROMPTON GREAVES
LTD. REP BY PRADIP AROTE.,

... Respondent

Mr. Suhas Naik and Mr. Ravi Gawas, Advocates for the applicant.

Mr. G. K. Sardesai and Mr. Avalon Alton Carvalho, Advocates for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 14th November 2017

P.C.

This is an application under Section 17B of the Industrial Disputes Act (the Act, for short).

2. The learned Labour Court, by the impugned Award dated 13/12/2016, has directed reinstatement of the applicant with full back wages. Admittedly, the last drawn wages of the applicant were Rs.6,000/- per month. It is now well settled that under Section 17B of the Act, only three ingredients are required to be satisfied, namely (i) an Award directing reinstatement of the

workman; (ii) the employer having challenged the same before this Court or the Supreme Court and (iii) that the workman should not have been employed in any establishment during such period. The first two ingredients are evidently satisfied. In so far as the third condition is concerned, the applicant has filed an affidavit stating that he is unemployed since the date of his termination.

3. The Division Bench of this Court in Letters Patent Appeal No.412/2008 (OIL AND NATURAL GAS CORPORATION LTD VS. NINAN THOMAS, decided on 18/12/2008), had an occasion to consider the object behind enactment of Section 17B of the Act. The following findings of the learned Single Judge in para 8 of the judgment, have been affirmed by the Division Bench :

"8. Section 17-B has been enacted by Parliament in order to provide relief to a workman who is ordered to be reinstated under an award of the Labour Court or the Industrial Tribunal during the pendency of the proceedings where the award is under challenge before the High Court or the Supreme Court. The payment which is required to be made is in the nature of subsistence allowance which is not refundable or recoverable from the workmen even if the award is set aside by the High

Court or the Supreme Court. Having regard to the nature and object of the provision and the judgment of the Supreme Court, it is impossible to subscribe to the view that this Court should in the exercise of its jurisdiction under Article 226, reject the application under Section 17-B, even though all the requirements which have been spelt out in the statutory provision have been fulfilled, by looking into the legality of the award. That would amount to rewriting legislation and imposing a condition which Parliament has not imposed. That lies beyond the jurisdiction of the Court under Article 226. In these circumstances, the Civil Application would have to be allowed and is accordingly allowed. Accordingly, the Civil Application is disposed of directing the employer, ONGC, to pay to the Applicant before the Court the wages last drawn by him from 21st March, 2007 which is the date on which the award was stayed by a learned Single Judge of this Court. The Civil Application is accordingly disposed of."

4. Considering the fact that all the conditions required to be fulfilled under Section 17B of the Act are satisfied, the application is allowed. The respondent is directed to pay to the applicant full wages, last drawn by him, at the rate of Rs.6,000/-

per month, from the date of the Award, within a period of six weeks from today.

5. By consent of parties, the hearing of the Writ Petition is expedited. The Writ Petition be added to final hearing board in the second week of January, 2018.

C. V. BHADANG, J.

SMA