



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.08.2017

Pronounced on : 15.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A.(MD)No.70 of 2014
and
M.P.(MD) Nos.1 and 2 of 2014

Nanda Kumar

... Appellant/1st Respondent

vs.

1.Gammon India Limited, Mumbai
through its Authorized Signatory,
P.A.Datar, working as Deputy
General Manager (Legal Department)
Gammon India Ltd.,
Gammon House,
Veer Savargar Marg, P.O.Box No.9129
Prabhadevi, Mumbai - 400 025. ..1st Respondent/Writ Petitioner

2.The Presiding Judge,
Labour Court,
Tirunelveli. ..2nd Respondent/2nd Respondent

Prayer : Writ Appeal filed under clause 15 of the Letters Patent, to set aside the order dated 04.03.2011 made in W.P.(MD) No.9192 of 2008 on the file of this Court.

Prayer in WP(MD). 9192/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second Respondent in I.D.No. 2/2006 dated 17/12/2007 by quashing the same as illegal, incompetent and without jurisdiction .

For Appellant : Mr.M.Md.Imran for
M/s.Ajmal Associates

For 1st Respondent : Mr.P.S.Sundaram
<https://hcservices.ecourts.gov.in/hcservices/>

JUDGMENT

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

The aggrieved workman has filed this intra court appeal questioning the order dated 4.3.2011 allowing W.P.(MD)No.9192/2008 filed by the first respondent / management.

2.The appellant was appointed as a Driver by Gammon India Limited on 1.10.1999. He was terminated from service on 11.5.2000. The appellant raised an Industrial Dispute on the ground that he was illegally terminated from service. Conciliation proceedings took place. The Conciliation Officer reported failure. The matter went to Labour Court, Tirunelveli and was taken up as I.D.No.2/2006. The appellant demanded reinstatement in service and also payment of back wages. The management was served with summons. But they remained ex parte. The appellant was examined as WW1 and two documents were marked on his side. The petition was allowed and an order for reinstatement and payment of back wages was made on 17.12.2007.

3.The management filed WP(MD)No.9192/2008 questioning the said award. The appellant / workman took out MP(MD)No.1/20011 u/s.17B of the I.D.Act, 1947. The management filed a detailed counter opposing the said petition. The learned Judge took up the said petition along with the main Writ Petition. By order dated 4.3.2011, the writ petition was allowed.

4.The learned Judge found that the ex-parte award dated 17.12.2007 passed by the Labour Court was bereft of reasons and also non speaking. After setting aside the award, the learned Judge also dismissed MP(MD)No.1/2011 on the ground that there are sufficient materials to decline relief under Section 17B of the Act. Aggrieved by the same, the workman is on appeal.

5.The learned Counsel appearing for the management submitted that the workman was rightly terminated from service and that in the instant case, there was no need for holding any enquiry. He placed reliance on the decision of the Hon'ble Supreme Court reported in AIR 2015 SC 1796 (*Ved Mitter Gill v. Union Territory Administration, Chandigarh*). He also pointed out that the workman had furnished incorrect particulars before the Labour Court and approached it with unclean hands.

6.The learned Counsel appearing for the appellant / workman contended that the learned Judge ought to have taken up the petition filed under section 17B of the I.D.Act in the first instance. He would also point out that the learned Judge erred in holding that the workman did not make out a case for relief under the said provision. In this case, the Labour Court had directed reinstatement of the appellant. The management questioned the same by filing a writ petition. Therefore during the pendency of the writ



proceedings, the management ought to have complied with the mandate laid down by the Statute by paying the last drawn wages.

7. The object of section 17B is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award during the pendency of the proceedings in which the said award is under challenge before the High Court or the Supreme Court vide (1999) 2 SCC 106 - *Dena Bank v. Kiritikumar T. Patel*. Of course, where the management had controverted the claim of the workman that he was not gainfully employed elsewhere with supporting evidence, the same has to be gone into and relief under section 17B of the Act cannot be mechanically granted vide (2010) 13 SCC 248 - *Rajasthan Gramin Bank v. Bishan Lal Bairwa*. The learned Judge following the Full Bench decision of this Court, reported in (1991) 2 MLJ 530 (*M/s. Godrej & Boyce Mfg. Co. Ltd., v. Presiding Officer, Principal Labour Court, Madras*) observed that section 17B of the Act, does not in any manner impair or interfere with the powers of the High Court under Article 226 of the Constitution of India and the Court still possesses the discretion to go into the question. If the conditions laid down in the provision are fulfilled, then the court shall direct the employer to pay the last drawn wages to the workman. Of course, if the workman was gainfully employed elsewhere, the question of directing payment of wages will not arise. The Hon'ble Full Bench while answering the reference, held that the court may make a different order and depart from the above rule only in extreme cases where it is demonstrated that the award was passed without jurisdiction or is otherwise a nullity. In the present case, even though the labour court had jurisdiction, the award is nevertheless a nullity in view of the utterly non-speaking nature of it. As rightly pointed out by the learned Judge even the point for determination was not framed. There has been a complete non-application of mind. The award was mechanically passed. Therefore, in the facts and circumstances of the case, the Learned Judge following the Full Bench decision in *Godrej & Boyce's case* declined to grant relief u/s. 17B of the Act.

8. But it must be borne in mind that the Hon'ble Supreme court in the decision reported in (1999) 9 SCC 229 held that the High Court acting under 226 of the Constitution of India would have no jurisdiction to direct non-compliance with the mandate of section 17B of the I.D. Act when the condition precedent for passing an order in terms thereof is satisfied. This decision of the Hon'ble Supreme Court was followed by a Division Benches of this Court in the decision reported in (2004) 2 LLN 1074 (*Management of Kasturi Mills Limited v. S. Devaraj and Assistant General Manager, State Bank of India v. T. Veerapandian*) (2006) 4 MLJ 1023. However in the present case we do not wish to delve further in the matter since the award itself has been set aside and the application u/s. 17B was disposed of only along with the main writ petition.



9. We are also of the view that the learned Judge was right in characterising the award passed by the Labour Court as one that cannot stand scrutiny in the eye of law. But once the award was set aside on the ground that it was non-speaking, the only course open to the writ court was to have remanded the matter to the file of the Labour Court. Admittedly the management remained ex-parte in this case. They have not adduced any evidence controverting the claim of the workman. Therefore, no occasion could have arisen for examining the matter on merits. Therefore, while sustaining the order of the learned Judge setting aside the award passed by the Labour Court, we remit the matter to the file of the Labour Court. We allow this writ appeal only to this limited extent. No costs. Consequently, connected miscellaneous petitions are closed.

/True Copy/

Sd/-
Assistant Registrar (P&A)

Sub-Assistant Registrar

To

The Presiding Judge,
Labour Court,
Tirunelveli.

Arul
RL/2C/4P/SV/MMS/SAR1/17/1/2018

Judgment made in
W.A. (MD) No. 70 of 2014
and
M.P. (MD) Nos. 1 and 2 of 2014

15.12.2017