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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 15.03.2018

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LPA 105/2018 & C.M. No. 9647/2018, C.M. No. 9648/2018, C.M. No. 9649/2018 & C.M. No. 9650/2018

HEADQUARTERS DELHI AREA PRINTING PRESS Appellant

Through: Mr. Iqbal Shamsi, Advocate.

versus

GOPAL SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE REKHA PALLI

SIDDHARTH MRIDUL, J. (ORAL)

1. The present Letters Patent Appeal filed belatedly challenges an order dated 15.12.2017 passed by a learned Single Judge in Writ Petition (Civil) No. 4223/2015 titled as “*Headquarters Delhi Area Printing Press vs. Gopal Singh*”(hereinafter referred to as the “subject writ petition”).

2. The subject writ petition which is pending adjudication assails an award dated 17.11.2014 passed by the learned Industrial Adjudicator in ID No. 27/2008, whereby the respondent was *inter alia* granted the relief of reinstatement with back wages from 02.12.2006.

3. Before adverting to the solitary contention made on behalf of the appellant, it would be profitable to extract the impugned order in its entirety. The same reads as follows:-

“Learned counsel for the petitioner submitted that the petitioner has paid the last drawn wages to the respondent, in compliance of the order dated 9.12.2016. However, learned counsel for the respondent submitted that the petitioner has not paid the minimum wages to the respondent. Last opportunity is granted to the petitioner to comply with the order dated 9.12.2016 in its full substance within four weeks, failing which the petition shall be dismissed for non-compliance.

The respondent is directed to file counter-affidavit within four weeks. Rejoinder thereto be filed within two weeks thereafter.

List on 4.4.2018.”

4. A plain reading of the above extracted order reflects that it was the submission on behalf of the respondent that the appellant had failed to comply with an earlier order dated 09.12.2016 in the subject writ petition, inasmuch as, the directions contained therein had not been complied with in toto.

5. In this behalf it would be necessary to extract the earlier order dated 09.12.2016 in the subject writ petition. It directed as follows:-

“CM No.24494/2015

The application is allowed and the petitioner is directed to pay the last drawn wages or minimum wages whichever is higher from the date of the impugned award i.e.

08th December, 2014 up to 06th January, 2016 within a period of four weeks from today to the respondent.

The date of 01st January, 2016 in the order dated 02nd January, 2016 (on the fourth line below) is corrected and be read as 06th January, 2016.”

6. From the above, it is axiomatic that the learned Single Judge vide order dated 09.12.2016, whilst disposing off CM No. 24494/2015 instituted on behalf of the respondent directed the appellant to pay to the former the last drawn wages or minimum wages whichever is higher from the date of the impugned award i.e. 08.12.2014 up to 06.01.2016, within a period of four weeks from the date of the order.

7. It is an admitted position that the said order dated 09.12.2016 was not carried in appeal on behalf of the appellant and has since become final. Even in the present appeal, the said order dated 09.12.016 and the directions given therein have not been assailed on behalf of the appellant. The only challenge is to the order dated 15.12.2017 which was merely in the nature of a direction to the appellant to comply with the earlier order dated 09.12.2016 in its entirety.

8. Be that as it may, the solitary submission made on behalf of the appellant is that within the stipulation of the provisions of Section 17-B of the Industrial Disputes Act, 1947 (hereinafter referred to as “the said Act”), they are liable to pay to the workmen only the “full wages last drawn” and not the minimum wages as directed by the earlier order dated 09.12.2016.

9. In this behalf, our attention has been invited by the appellant to a decision of the Hon'ble Supreme Court in ***Dena Bank vs. Kirtikumar T. Patel*** reported as ***AIR 1998 SC 511*** and, in particular, paragraph 20 thereof, to urge that the payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court. Since the payment is of such a character, Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated.

10. We are unable to agree with the contention made on behalf of the appellant for two reasons. Firstly, it is axiomatic that all legislations in a welfare State are enacted with the object of promoting the general welfare. But certain enactments are more responsive to some urgent social demands and have some immediate and visible impact on the Society by operating more directly to achieve constitutional directives. These enactments, in our view, demand an interpretation liberal enough to achieve the legislative purpose, without doing violence to the language.

11. In this behalf, it would be appropriate to extract paragraph 22 of ***Dena Bank vs. Kirtikumar T. Patel*** (*supra*), which has been strongly relied upon by the appellant himself before us. It reads as follows:-

“22. As regards the powers of the High Court and the Supreme Court under Article 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 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 a 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 de hors 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. [supra] that in exercise of the power under Article 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 Article 226 and 136 of the Constitution.”

12. A plain reading of the above extracted paragraph clearly reflects the legal position that the power of the High Court under Article 226 of the Constitution of India does not in any way preclude the Court to pass an order directing payment of a higher amount to the workman, if such a higher amount is considered necessary in the interest of justice. Whilst issuing such a direction, the Court may also give a direction regarding the refund or recovery of the excess amount in the event of the award being set aside. The reason behind such an approach is predicated on the underlying object of the enactment which is to relieve to a certain extent the hardship that is caused

to the workman due to the delay in the implementation of the award on account of the proceeding challenging its correctness. Such an interpretation subserves the object and intention of the Parliament in enacting Section 17-B of the said Act.

13. Secondly, even otherwise, the view canvassed before us is no longer *res integra*, inasmuch as, in ***Delhi Transport Corporation vs. The Presiding Officer, Labour Court of Delhi*** and other connected matters reported as 96 (2002) DLT 103, this Court observed that if the actual wages last drawn by a workman fall short of the mandatory measure of minimum wages, the Court must order payment of minimum wages.

14. In view of the foregoing discussion, the present petition is completely devoid of any merit and is accordingly dismissed. However, the delay in instituting the same is condoned.

SIDDHARTH MRIDUL, J

REKHA PALLI, J

MARCH 15, 2018/ss