

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO.1993 OF 2019
WITH
CIVIL APPLICATION NO.1994 OF 2019
IN
WRIT PETITION NO.5049 OF 2011**

RAJKUMAR RAMDAYAL RAI)...APPLICANT

V/s.

HARIPRASAD P. SINGHANIA AND ANR.)...RESPONDENTS

Shri.Indrajeet Kulkarni and Ms.Ankita Manjrekar, Advocate for the Applicant.

Dr.D.S.Hatle a/w. Shri.Deepak Jamsandekar, Advocate for the Respondents / Original Petitioners.

CORAM : A. M. BADAR, J.

DATE : 6th NOVEMBER 2019

P.C. :

1 By Civil Application No.1993 of 2019, respondent herein, who was party no.2 in the reference proceedings, is praying for directing the petitioner/employer to pay last drawn wages to him, during pendency of the writ petition. Vide Civil

Application No.1994 of 2019, the respondent herein/party no.2 in the reference proceedings before the learned Labour Court is praying for directing the petitioner/employer to deposit an amount of Rs.1,79,615/- along with prevalent rate of interest in this court.

2 Heard the learned counsel appearing for the applicant/respondent herein/party no.2 before the Labour Court in the reference proceedings. The learned counsel argued that Award directing reinstatement with continuity in service with full back wages has been stayed by this court and therefore, in pursuant to provisions of Section 17-B of the Industrial Disputes Act, 1947, the applicant/respondent herein/party no.2 is entitled for wages during pendency of the petition. It is further argued that Revenue Recovery Certificate has already been issued against the petitioner/employer and therefore, the entire back wages need to be deposited before this court.

3 The learned counsel appearing for the petitioner/employer/party no.1 vehemently opposed the averments made in the petition by contending that there is no proper adjudication of the industrial dispute and therefore, what was passed by the learned Labour Court, cannot be termed as Award. It is further argued that the applicant/respondent herein may not be the real employee/party no.2 and therefore, this court had directed filing of notarized Vakalatnama. The learned counsel for the petitioner/employer/party no.1 further argued that hardly for a few months, the applicant/respondent herein/party no.2 was in employment, and as such, the reference ought not to have been answered in affirmative, because he had not completed 240 days continuous service with the petitioner/employer/party no.1. Therefore, in submission of the learned counsel for the petitioner/employer/party no.1, there was no need to issue either notice or to give notice pay or retrenchment compensation. The learned counsel further argued that there was settlement between the parties and in terms of that settlement, the workman has accepted the money and left the employment. It is further argued that

manufacturing activity of the petitioner/employer/party no.1 has already been stopped and therefore, there is no question of payment of wages to the applicant/ respondent herein /employee/ party no.2 before the learned Labour Court.

4 I have considered the submissions so advanced and also perused the material placed on record

5 Industrial dispute regarding termination of the respondent herein/employee/party no.2 by the petitioner/ employer/party no.1 was referred for adjudication to the Labour Court, Thane. In terms of reference, the workman/party no.2 had filed his settlement of claims alleging that he came to be terminated by the petitioner/party no.1 with effect from 16th January 2005 without following due process of law. It is averred that neither statutory notice was issued nor notice pay was given nor retrenchment compensation was offered to the workman, prior to his retrenchment. With this, party no.2/workman had claimed for reinstatement with all consequential reliefs.

6 This claim came to be opposed by the petitioner/party no.1 by filing written statement at Exhibit 20. Several contentions were raised including that the claim of employment with the party no.1, raised by the workman, is false. It was averred that the workman/party no.2 was in employment since 2nd September 2004 as Helper to the Weaver and he has collected his dues in respect of Full and Final Settlement. From 28th December 2004 he was not interested in continuing further in employment of the party no.1.

7 Parties went for trial and party no.2/workman had led his evidence. He was cross-examined. However, the petitioner/ party no.1 had not adduced any evidence in rebuttal. This resulted in passing the Award answering the reference in affirmative. The operative portion of the Award reads thus :

“ **AWARD**

1. The reference is answered in affirmative.
2. The 2nd party workman is entitled for his reinstatement of service with full back wages

and continuity of service.

3. The findings be communicated to the Dy.Commissioner of Labour Thane accordingly.”

It is, thus, clear that the Industrial Court has directed reinstatement of the workman with all consequential reliefs including back wages. Perusal of evidence of the respondent/ party no.2/workman shows that he has categorically averred that since his termination, he is not in gainful employment. In his words, he deposed that he tried to get job but could not secure one.

8 Section 17-B of the Industrial Disputes Act, 1947 reads thus :

“17-B. 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.”

9 This court, while issuing notice to the respondent/workman had directed the petitioner/employer to deposit an amount of Rs.60,000/- and accordingly on depositing the said amount, the petition came to be admitted and interim relief is continued. The interim relief prayed in this petition is for stay to the effect and operation as well as implementation of the

impugned Award directing reinstatement of the workman/party no.2 with all consequential benefits including back wages.

10 It is, thus, seen from the material placed on record that the workman had categorically deposed before the Labour Court that after his termination, he is not in gainful employment and he could not secure any alternate job. In this view of the matter, mandate of Section 17-B operates with full force and therefore, the employer i.e. party no.1 means the petitioner herein, is required to pay the workman full wages during the period of operation of stay and pendency of the petition. Arguments advanced on behalf of the employer are, as such, devoid of merit.

11 In this view of the matter, the applications are disposed off with a direction to the petitioner to deposit entire back wages due and payable to the respondent/party no.2, before this court, within a period of one month from today. The petitioner shall pay full wages due and payable to the respondent/party no.2 from the date of this order till disposal of the petition.

13 Hearing of the petition is expedited. Entitlement of the respondent to withdraw the arrears of back wages shall be decided later on.

(A. M. BADAR, J.)