

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (W) NO.643/2018 IN WRIT PETITION NO.2356/2016

The President, Bajaj Finance Ltd., Pune. and anr.

Vs.

Mr. Rajesh V.Mandawkar.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A.P.Wachasunder, Advocate for petitioner/non applicant.
Shri RS.Bhure, Advocate for respondent/applicant.

CORAM : A.S.CHANDURKAR, J.

DATED : August 05, 2019

This application has been moved by the respondent under the provisions of Section 17 B of the Industrial Disputes Act, 1947 (for short, 'the said Act'). In the said application, it has been stated that the order of termination that was issued by the petitioner herein was the subject matter of reference before the Labour Court and by the award dated 04.02.2016, the Labour Court has answered the reference in affirmative. It has directed reinstatement of the respondent on his former post along with continuity in service and full back-wages. This Court has admitted the writ petition and has stayed the execution of the award in question. In that backdrop the respondent has moved the present application stating therein that he is entitled to receive last drawn wages during the pendency of the proceedings. An affidavit in support of the statement that he is not gainfully employed has also been placed on record vide affidavit dated 05.03.2019.

Reply has been filed on behalf of the petitioner-employer denying the prayer made therein. It has been stated that during the pendency of the proceedings before the Labour Court, the respondent was

gainfully employed and he is therefore not entitled to any interim relief under Section 17 B of the said Act. It is also stated that since the respondent had availed of various loans and was paying instalments, it indicated that he had source of income and hence he was not entitled to any relief.

Shri R.S.Bhure, learned counsel for the respondent-employee submits that since the award directing reinstatement in service has been stayed by this Court and the respondent is out of employment, he is entitled to receive last drawn wages of Rs.9,000/- per month. Question of going into the merits of the award would not arise at this stage. He has placed reliance on the decisions in *Dena Bank Vs. Kiritikumar T. Patel*, 1999 SCC (L&S) 466, *Steel Authority of India Ltd. Vs. Union of India and ors.* 2019 II CLR 724 and *Emco General Plastic Industries (P) Ltd. Vs. State of West Bengal*, 2015(3) CLR 49 in that regard. He therefore submits that since the requisite ingredients of Section 17 B of the said Act stands satisfied, the application deserves to be allowed.

Shri A.P.Wachasunder, learned counsel for the petitioner-employer on the other hand submits that the Labour Court was not justified in answering the reference in affirmative. He submitted that misconduct was held to be duly proved by the Labour Court. However while passing the final orders, the Labour Court ignored its earlier finding and held that the misconduct was not proved. He further submitted that by relying on the decisions that were overruled by the Division Bench, the Labour Court was not justified in holding in favour of the employee. According to him, the employee was self employed and from his bank statement as well as loan accounts it was clear that he had independent source of income. As the respondent was gainfully employed, he was not entitled for any directions under Section 17 B of the said Act. In support of his submissions, learned counsel placed reliance on the decisions in *Elpro International, Ltd. Vs. Smt. K.B.Joshi and others*, 1987- II LLN 695,

Godrej and Boyce Manufacturing Co. Ltd., Madras Vs. Principal Labour Court, Madras and anr. 1992- II LLJ 201, General Secretary, Coal Washeries Workers Union, Dhanbad Vs. Employers in Relation to the Management of Dugda Coal Washery of M/s. BCCL, (2016) 16 SCC 148 and Delhi Technological University Vs. Dinesh Kumar, 2013(1) CLR 125. Hence the application was liable to be rejected.

I have heard the learned counsel for the parties at length. While considering the application under Section 17 B of the said Act, the relevant fact to be kept in mind is whether the employee is gainfully employed even after termination of his services or whether on account of the interim relief as granted staying the order of reinstatement, he is not in a position to sustain himself. Material on record consists of the affidavit filed by the employee stating therein that he has no other source of income and that he is not gainfully employed. According to the employer, since the employee availed of loan facilities it was clear that he had a definite source of income which was not being disclosed. Perusal of the various documents placed on record indicate that payment of certain instalments in the year 2013 to 2015. The award in question is dated 21.03.2016 and the application under Section 17 B of the said Act has been filed on 22.09.2017. There is no other material placed on record by the employer after execution of the award was stayed to indicate that the respondent was gainfully employed. The respondent has placed on record bank statements vide pursis dated 24.07.2019. Those statements also do not indicate income received on account of any gainful employment. Since there is no material on record to hold that the respondent is gainfully employed, he is entitled to the last drawn wages under Section 17 B of the said Act from the date of the application.

Though the learned counsel for the employer sought to refer to the findings recorded by the Labour Court to indicate that the award was bad in law, that exercise is not permissible while considering the

application under Section 17 B of the Act. It has not been demonstrated that the award is either without jurisdiction or a nullity which exceptions have been carved out in *Elpro International Ltd.* (supra). The ratio of said decision does not apply to the case in hand.

In that view of the matter, the application is liable to allowed. Accordingly the petitioner shall pay to the respondent last drawn wages of Rs.9,000/- per month from September, 2017. Period of six weeks is granted to make the entire payment and thereafter continue to pay the said amount every month till the writ petition is decided. The application is allowed in aforesaid terms and disposed of.

CIVIL APPLICATION (W) NO.2275/2016

In view of order passed on C.A.(W) No.643/2018, the prayer made in this application does not survive. Hence this civil application is disposed of.

JUDGE

Andurkar.