

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Thursday, the Twenty Sixth day of September Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE S.M.SUBRAMANIAM

WMP No.3921 of 2018

in WP.No.8799 of 2017

M.MURUGESAN,

[PETITIONER]

Vs

1 WELLKNIT INDUSTRIES,
REP BY HR-ADMIN MANAGER P.MURUGESAN,
NO.61, 15-VELAMPALAYAM MAIN ROAD,
ANUPPARPALAYAM POST, TIRUPUR- 641 652

[RESPONDENTS]

2 THE PRESIDING OFFICER,
LABOUR COURT, COIMBATORE

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Direct the Writ Petitioner Management to pay the Petitioner last drawn wages under Section 17-B of the ID Act every month from the date of the award (in WMP.No.3921/2018) till the disposal of the above WP.No.8799/2017.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.V.AJOY KHOSE, Advocate for the petitioner and of M/S.R.BHARATHKUMAR, Advocate for the 1st respondent the court made the following order:-

The miscellaneous petition is filed for a direction to direct the writ petitioner-management to pay the writ petitioner last drawn wages under Section 17-B of the Industrial Disputes Act, 1947 every month from the date of the Award till the disposal of the writ petition.

2.The writ petition was filed challenging the Award dated 27.09.2016 passed in I.D.No.675 of 2008 and an interim stay was granted against the Award on 12.04.2017.

3.The second respondent-workman filed the present miscellaneous petition, seeking a direction to the writ petitioner-management to pay last drawn wages under Section 17-B of the Industrial Disputes Act.

4. Admittedly, the Award was passed granting reinstatement with 25% back wages. The petitioner/second respondent workman filed an affidavit stating that he is not gainfully employed. Therefore, the second respondent-workman is entitled for last drawn wages under Section 17-B of the Industrial Disputes Act, 1947.

5. Large number of such petitions are filed before this Court and kept pending for many years. The workman is entitled to claim last drawn wages during the pendency of the writ petition. However, there is a dispute in this regard between the parties on the ground that whether the workman is gainfully employed or not.

6. This Court has adopted a balancing approach to mitigate the circumstances as well as to prevent the workman from getting lastdrawn wages based on certain false or incorrect affidavit if any filed before the High Court. In order to adopt a pragmatic approach, this Court is inclined to consider the issues in detail.

7. Section 17-B of the 'Industrial Disputes Act' [hereinafter referred to as 'ID Act'] is a beneficial legislation and requires liberal interpretation. 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, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High 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 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.

8. Thus, the ingredients of Section 17-B categorized in three parts and they are:

(i) the Labour Court should have directed reinstatement of the workman,

(ii) the employer should have preferred proceedings against such award in the High Court.

(iii) the workman should not have been employed in any establishment during such period.

9. The purpose and object of Section 17-B of ID Act appears to ensure that a workman, in whose favour an award for reinstatement has been passed, is at least paid his last drawn wages. The purpose of introducing Section 17-B of the ID Act appears to be not to provide for a punitive measure or a disincentive for the employers to challenge the award passed by the Labour Court, but to mitigate the hardship faced by the workman on account of delays occasioned

because of pendency of litigation before the High Court. This object appears to be not to discourage an employer from assailing the award but to ensure that the workman who has prevailed before the Labour Court does not suffer for want of subsistence allowance for his sustenance.

10. The Constitutional Courts have held that Workmen can be denied the benefits under Section 17-B of the ID Act only when it is proved to the satisfaction of the Court that the workmen have been employed and have been receiving remuneration during the period of pendency of the writ petition.

11. Equally, the labourers are not exploited nor are the entrepreneurs held to ransom. More of give and take philosophy has to be inculcated both in the minds of the entrepreneurs and the workers. Labour Unions should play a positive role in this direction and encourage the workers to increase productivity and avoid wastages of time and material which is paramount for an industry in this competitive world. To deal with erring employees suspension, removal, dismissal are all tools in the hands of the entrepreneurs. However, if an employee is duly reinstated by a Labour Court, Industrial Tribunal or National Industrial Tribunal and the employer chooses to appeal to the High Court, it is only just and proper to meet the ends of equity that the employee concerned is given full back wages.

12. A beneficial statute is a class of statute which seeks to confer benefit on individuals or class for persons by relieving them of onerous obligation under contracts entered into by them or which tend to protect persons against oppressive act from individuals with whom they stand in certain relations. The established principle in the construction of such statutes is there should not be any narrow interpretation. The Courts should attempt to be generous towards the persons on whom benefit should be conferred.

13. Sometimes a liberal construction must be used in order to make the legislative intent effective, and sometimes such a construction will defeat the intention of the legislature. The labour and welfare legislations should be broadly and liberally construed and while construing them due regard to the Directive Principles of State Policy (Part IV) and to any international convention on the subject must be given by the Courts. The liberal construction must flow from the language used and the rule does not permit placing of an unnatural interpretation on the words contained in the enactment nor does it permit the raising of any presumption that protection of widest amplitude must be deemed to have been conferred upon those for whose benefit the legislation may have been enacted.

14. In this context, reading of Section 17-B of the ID Act unambiguously portrays that the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court, full wages last drawn by him, inclusive of any

maintenance allowance admissible to him under any rule. However, the Proviso clause stipulates that where it is proved to the satisfaction of the High 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.

15. Thus, a pragmatic and balancing approach is undoubtedly required and to be adopted by the High Court. Arguments are advanced and either side by stating that the long pendency of the writ petitions before the High Court are causing greater financial loss to the entrepreneurs in view of the fact that they are paying 17-B wages running to several lakh without extracting any work from the employees. Further, arguments are advanced by stating that in respect of certain serious and heinous offences, the benefit of 17-B of the ID Act shall not be extended to the workman, so also, it is contended that the workman is gainfully employed elsewhere and it is further brought to the notice of this Court that it is very difficult for the entrepreneurs and it may not be practicable for them to establish before the High Court that the workmen are gainfully employed. In other words, it is forcibly contended that the entrepreneurs may not be in a position to establish in all circumstances that the workmen is gainfully employed in another establishment and most of the times, the employees also filing affidavit in a mechanical and routine manner and in many such cases, such affidavits are incorrect and false. In order avail the benefit of Section 17-B of the ID Act, the workmen are filing false affidavit before the High Court and those circumstances are also to be considered by this Court.

16. A striking balance is required in this regard in view of the fact that neither the workmen nor the entrepreneur should be exploited. Equally, the beneficial legislation is to be implemented in its real spirit. Undoubtedly, false affidavits are filed before the Courts in order to avail the benefit of Section 17-B of the ID Act and Courts are also experiencing such affidavits and after sometime, the facts were brought before this Court and no actions could be taken at that point of time.

17. Mainly, these labour matters are pending for long years before the High Courts. Many number of cases are pending for years together. The High Court is also unable to dispose of all these cases within a reasonable period of time. Undoubtedly, effective measures are imminent to clear all such pending cases, which all are pending for more than 10 years. The joint efforts of the litigants, lawyers and Courts are required. Wherever it is possible, the parties must cooperate for settlement. The lawyers must cooperate by effectively advancing their arguments in nutshell, enabling the Courts to dispose of all such cases in a speedy manner. The time constraint must also to be kept in mind by the lawyers, while advancing arguments. The professionalism and placing the arguments in nutshell to the extent possible for the purpose of disposing the case must be the point for early disposal

of these long pending cases. Admittedly, long pendency causes prejudice to the workmen as well as to the entrepreneurs. Thus, the joint effort by the learned Members of the Bar, Courts as well as the litigants are highly warranted.

18. On account of the facts and circumstances and the reasons elaborately considered in the aforementioned paragraphs, this Court is inclined to pass the following orders in order to balance the situation and to ensure that the interest of both the workmen as well as the entrepreneurs are protected:-

1) The employer/Management, at the first instance is at liberty to reinstate the workmen during the pendency of the proceedings before the High Court, without prejudice to their contentions and grounds raised in the writ proceedings and such reinstatement by the employer would be subject to the final outcome of the writ petition. The Management/employer is directed to take a decision in this regard within a period of two weeks from the date of receipt of a copy of this order.

2) If any decision is taken to reinstate the workmen during the pendency of the proceedings before the High Court, then the same shall be communicated to the workmen concerned in writing within a period of two weeks from the date of such decision and on receipt of any such proceedings / order from the employer / Management, expressing their willingness to reinstate the workmen, then the workmen is directed to join duty within a period of ten (10) days from the date of receipt of a copy of the order of reinstatement. If the workmen fails to report duty within ten days as stated above, then the workmen is not entitled to claim the benefit of 17-B wages under the ID Act and in this regard, a factual inference is to be drawn by the Courts that such workmen is gainfully employed elsewhere and not interested to work with the employer, who filed writ proceedings before the High Court. In the event of reinstatement, current wages is to be paid.

3) When the employer is not inclined to reinstate the workman, then the Management is directed to pay last drawn wages to the workman under Section 17-B of ID Act from the date of filing of the writ petition within a period of four weeks from the date of receipt of a copy of this order.

4) After complying with Section 17-B of ID Act, and during the pendency of the Court proceedings, if the employer / Management is able to establish that the workmen is gainfully employed, then appropriate petition shall be filed for the withdrawal of the order passed by this Court granting the benefit of Section 17-B of the ID Act.

5) If the workmen / employee filed a false or incorrect affidavit regarding their gainful employment elsewhere during the Court proceedings, then they are responsible and liable for filing of such false affidavit and consequently a prosecution shall be instituted for filing false affidavits, misleading the Court and for perjury, if the same is established with evidence. The employer / Management is at liberty to establish if such false affidavits / misleading facts are filed before the High Court for the purpose of getting an order under Section 17-B of ID Act. The High Court may institute contempt proceedings also, if the facts and circumstances warrants.

6) Rest of the issues raised in the writ proceedings shall be adjudicated at the time of the final hearing of the writ petition.

7) The petition stands disposed of.

-sd/-

26/09/2019

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRESIDING OFFICER,
LABOUR COURT, COIMBATORE

C.C. to M/S.R.KRISHNASWAMY, Advocate on payment of necessary charges

C.C. to M/S.R.BHARATHKUMAR, Advocate on payment of necessary charges

Order

in
WMP.3921/2018

in
WP.8799/2017

Date :26/09/2019

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KP(09/10/2019)