

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Special Original Jurisdiction )

Thursday, the Twenty First day of March Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

WMP No.19234 of 2017

IN WP.34716/2006

B.MURTY,

[ PETITIONER ]

Vs

1 TAMIL NADU STATE TRANSPORT [ RESPONDENTS ]  
CORPORATION (VILLUPURAM) LTD.,  
VELLORE REGION, REP. BY ITS GENERAL MANAGER.

2 THE JOINT COMMISSIONER OF  
LABOUR (CONCILIATION), DMS COMPOUND,  
TEYNAMPET, CHENNAI-600 006.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Direct the 1st Respondent / Petitioner to pay last drawn wages of Rs.4,474/- to the Petitioner under Section 17-B of I.D. Act, (WMP.19234/2017) pending disposal of the above Writ Petition.34716/2006

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.S.T.VARADARAJULU, Advocate for the petitioner the court made the following order:-

ORDER

This Writ Petition was filed for issuing a Writ of Certiorari to call for the records of the First Respondent in Approval Petition No.146 of 2003 dated 12.02.2005 and quash the same.

2.Many years after the Writ Petition was filed, the Second Respondent filed a Miscellaneous Petition under Section 17-B of the Industrial Disputes Act for a direction to pay the full last drawn wages to the Second Respondent for the period that the said Writ Petition is pending. In the said Petition, the Second Respondent states that the full last drawn wages of the said second respondent was Rs.4,474/-.

3. Therefore, the Second Respondent states that he is entitled to payment of the full last drawn wages during the entire period that the Writ Petition is pending. In the affidavit in support of the said Miscellaneous Petition, the Petitioner/Second Respondent states that after he was dismissed from service by the Petitioner/First respondent herein, he was unable to get employment in spite of exercising best efforts in that regard. Consequently, the Petitioner/Second Respondent states that he and his family members are starving on account of non-employment.

4. The Petitioner/First Respondent did not file a counter to the Miscellaneous Petition. As a result, this Court will proceed on the basis that the averments of the Petitioner herein/Second Respondent with regard to his failure to be gainfully employed are correct. In order to decide this Miscellaneous Petition, it is necessary to closely examine Section 17-B of the Industrial Disputes Act, which reads as under:

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 her 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 received 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.

5. At the hearing, the learned counsel for the Second Respondent/Petitioner in the Miscellaneous Petition, relied upon a judgment of the Hon'ble Supreme Court in RAJESHWAR MAHTO Vs. ALOK KUMAR GUPTA reported in (2018) 4 SCC 341, wherein the Hon'ble Supreme Court held that even if the employer eventually succeeds in its appeal against the employee, the employer continues to remain under the legal obligation to comply with the order passed by the Court under Section 17-B of the Industrial Disputes Act.

6. The learned counsel appearing for the Second Respondent/Petitioner herein also relied upon an order passed by this Court in M.P. No.1 of 2006 in W.P. No.35369 of 2006, wherein this Court directed the Petitioner therein to comply with Section 17-B by paying last drawn wages for the period that the said Writ Petition was pending.

7. In response, the learned counsel appearing for the Petitioner/First Respondent herein in the Miscellaneous Petition pointed out that the Petitioner herein/Second Respondent also filed a case before the Additional Labour Court under the Industrial Disputes Act in respect of his dismissal from service. The said case was disposed of by order dated 10.11.2011 whereby the Petitioner/First Respondent herein was directed to reinstate the Second Respondent/Petitioner herein in service with continuity of service and 25% of back wages with all other attendant benefits. In this regard, it was submitted that a Division Bench of the Orissa High Court in MANAGEMENT OF ORISSA ROAD TRANSPORT COMPANY LTD. Vs. M.VENKATA RAO reported in 1993 (1) LLJ 468 had held that an order of approval under Section 33 (2) (b) of the Industrial Disputes Act is not a bar to the exercise of jurisdiction by the Tribunal under Section 10 of the said Act. It was further submitted that the said order of the Additional Labour Court was the subject matter of challenge in W.P.No.20375 of 2012, which is pending adjudication. Accordingly, the learned counsel submitted that there would be conflict if this Miscellaneous Petition is decided on an independent basis.

8. The learned counsel appearing for the Second Respondent, however, disputed the contention that there would be conflict. In any event, he submitted that the statutory right of the Second Respondent cannot be divested in this manner. He further submitted that the court could mould the relief if necessary.

9. The court carefully considered the affidavit in support of the Miscellaneous Petition, the Award of the Labour Court and the oral submissions of both parties.

10. It is evident that the Second Respondent/Petitioner herein has filed the Miscellaneous Petition under Section 17-B belatedly. However, there is nothing in Section 17-B that indicates that the Second Respondent/Petitioner herein would be divested of his right in such event although it may be a factor to be borne in mind by the Court. The primary prerequisite for an application under Section 17-B is that the applicant should not be gainfully employed elsewhere and that he should state so in an affidavit. This prerequisite has been complied with by the Second Respondent/Petitioner and, importantly, these statements have not been refuted by the Petitioner.

11. The other aspect to be considered is whether an order in this Miscellaneous Petition would result in conflict with possible orders in the connected Writ Petition. In this regard, the Court is conscious of the fact that the amounts paid in a petition under Section 17-B are not liable to be refunded even if the Petitioner eventually succeeds. In specific terms, the order of the Additional Labour Court is for reinstatement of the Second Respondent/Petitioner with continuity of service but only 25% of back wages. Accordingly, if this Court directs the Petitioner/First Respondent herein to pay the full last drawn wages, including

arrears, to the Second Respondent/Petitioner herein for the entire duration that this writ petition is pending, it would be very difficult to turn the clock back subsequently. Nevertheless, the Second Respondent/Petitioner herein is exercising a statutory right and has succeeded, wholly a party, in both proceedings and these factors should also be borne in mind.

12. Therefore, the question arises as to whether the Court is bound to direct payment of full last drawn wages or whether the relief could be moulded. The Full Bench of this Court, in GODREJ AND BOYCE MANUFACTURING COMPANY LTD reported in 1992 (II) LLJ 201, held that the power of this Court under Article 226 of the Constitution is not whittled down by Section 17-B. Applying this principle and considering the facts and circumstances holistically, this Court is of the view that the interest of justice would be satisfied if the Petitioner/First Respondent herein is directed to pay 25% of the full last drawn wages to the Second Respondent/Petitioner herein from the date of filing of this Writ Petition till the date of the Award of the Labour Court. As regards the period subsequent thereto, full last drawn wages should be paid to the Second Respondent/Petitioner herein. An ancillary question that arises for consideration is whether an Order under Section 17-B may be passed in a challenge to an order refusing approval under Section 33 (2) (b). A Division Bench of the Calcutta High Court in the case of BATA INDIA LTD Vs. SEVENTH INDUSTRIAL TRIBUNAL WB, (1994) 1 SLR 155 (DB) held that an application under Section 17-B is maintainable in that situation. This Court is in respectful agreement with that view especially in light of the object and purpose of Section 17-B, as elucidated by the Supreme Court in BHARAT SINGH Vs. MANAGEMENT OF NEW DELHI TUBERCULOSIS CENTRE, 1986 (II) LLJ 217.

13. In view of the foregoing analysis, the Petitioner in the Writ Petition is directed to pay 25% of the full last drawn wages from the date of filing of this Writ Petition up to the date of the Labour Court Award (i.e. up to 10.11.2011) and the full last drawn wages for the period subsequent thereto until the date of this order to the Second Respondent/Petitioner herein within a period of three weeks from the date of receipt of a copy of this order. In respect of the period subsequent to the date of this order, the full last drawn wages for a month shall be paid on or before the 7th day of the following English calendar month to the Second Respondent/Petitioner herein until disposal of this Writ Petition. This Miscellaneous Petition is allowed on these terms but there shall be no order as to costs.

-sd/-

21/03/2019

/ TRUE COPY /

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

TO

1 THE GENERAL MANAGER.  
TAMIL NADU STATE TRANSPORT CORPORATION  
(VILLUPURAM) LTD., VELLORE REGION.

2 THE JOINT COMMISSIONER OF  
LABOUR (CONCILIATION), DMS COMPOUND,  
TEYNAMPET, CHENNAI-600 006.

C.C. to M/S.S.T.VARADARAJULU Advocate on payment of necessary charges

Order  
in  
WMP.19234/2017  
in  
WP.34716/2006

Date :21/03/2019

From 26.2.2001 the Registry is issuing certified  
copies of the Interim Orders in this format  
RRI 02/04/2019



WEB COPY