

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Special Original Jurisdiction )

Monday, the First day of November Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE M.S.RAMESH

WMP.No.21520 of 2021

IN WP.No.1580 of 2021

A.JOSEPHRAJ [ PETITIONER ]  
JUNIOR GRADE CLERK (S.NO. 17110),  
UTHUKKOTTAI DEPOT, RES.AT A.JOSEPHRAJ,  
NO.131, KANDAN STREET, PERIYA NATHAM,  
CHENGALPATTU-2.

Vs

1 THE MANAGEMENT, [ RESPONDENTS ]  
TAMIL NADU STATE TRANSPORT CORPORATION  
(VILLUPURAM) LTD., KANCHEEPURAM REGION,  
PONNERIKARAI, BANGAPORE NATIONAL HIGHWAY,  
KANCHEEPURAM-631 552.

2 THE SPECIAL JOINT COMMISSIONER OF LABOUR,  
TEYNAMPET, CHENNAI.

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 Corporation either to reinstate the Petitioner or to pay the Petitioner wages every month from the date of the order passed in the Approval Petition, (in WMP.No.21520 of 2021) till the disposal of the WP.No.1580 of 2021.

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.V.AJAY KHOSE, Advocate for the petitioner and of MR.K.J.SIVAKUMAR, Advocate for the 1<sup>st</sup> Respondent and of MR.S.ARUMUGAM, GOVERNMENT ADVOCATE on behalf of the 2<sup>nd</sup> Respondent the court made the following order:-

Heard the learned counsel for the parties.

2. The present application filed by the first respondent workman is one seeking for payment of the last drawn wages under Section 17B of the Industrial Disputes Act, 1947 (hereinafter referred to as the

"Act"). The petitioner-Management had dismissed the first respondent herein from the services through an order dated 30.11.2013, pursuant to certain proved charges. The Approval Petition filed under Section 33 (2)(b) of the Act, dated 30.11.2013, came to be rejected by the second respondent herein on 31.01.2018 in the proceedings in A.P.No.327 of 2013. In view of the rejection of the Approval Petition, the first respondent herein is deemed to be in service, without reference to the dismissal order and since the petitioner-Management had not reinstated him back into the services, he has claimed his last drawn wages under Section 17B of the Act.

3. The present Writ Petition was filed before this Court on 17.02.2021 after more than 2 years. This is not the first time that this Court had been receiving Writ Petitions challenging either the Award of Reinstatement or the Rejection of the Approval Petition under Section 33 (2)(b) of the Act by the Management, after an inordinate delay. Apparently, these kinds of belated filing of Writ Petitions are made after the execution proceedings/computation petitions are filed by the concerned workmen, after the Management had ignored the Award/Orders of Rejection of the Approval Petitions.

4. On a *prima-facie* view, this Court felt that such a conduct on the part of the Management in failing to reinstate the workman and at the same time, choosing to file the Writ Petition after an inordinate delay, would have caused serious prejudice to the concerned workman and therefore the members of the bar, representing both the Management and the workman, were requested to address the following issue:

"From what date would a workman, who had the benefit of the Award for Reinstatement or whose Approval Petition under Section 33(2)(b) of the Act was rejected, be entitled to his 'last drawn wages' under Section 17B of the ID Act, in cases where the Writ Petition challenging such Awards/Rejection Orders are filed after an inordinate delay?"

At this juncture, this Court would like to place its appreciation to the assistance of the bar in general and that of the learned counsels viz., Mr.N.G.R.Prasad, Mr.V.Ajoy Khose, Mr.Balan Haridass, Mr.S.Ravindran, Senior Counsel and Mr.Anand Gopalan for their valuable assistance.

5. Before addressing the aforesaid issue, the relevant provision is extracted herein for convenience:-

**Section 17B:-**"Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of 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."*

6. The object and reasons for enacting Section 17B of the Act is as follows:-

*"When Labour Courts pass award of reinstatement, these are often contested by an employer in the Supreme Court and High Courts. It was felt that the delay in the implementation of the award causes hardship to the workman concerned. It was, therefore, proposed to provide the payment of wages last drawn by the workman concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or High Courts."*

7. Section 17B reveals three necessary ingredients for the application of this Section, namely,

i)The Labour Court should have directed reinstatement of the workman or the Authority ought to have rejected the approval petition under Section 33(2) (b) of the Act;

ii)The employer should have preferred proceedings against such award/rejection order before the High Court or the Hon'ble Supreme Court; and

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

8. The Law with regard to the date of commencement of the payment of wages, under Section 17B, has been time and again dealt by the Hon'ble Supreme Court, as well as this Court, including various other

High Courts. As the Section itself suggests, the payment of the last drawn wages would be during the period of pendency of the proceedings in the High Court or in the Hon'ble Supreme Court. In other words, the commencement of the payment of this last drawn wages would be from the date of filing of the proceedings in the High Court or in the Hon'ble Supreme Court. Different views have been expressed by various High Courts with regard to the commencement of the payment of the 17B wages. However, the common feature found in all these cases is that, this Court had adopted the facts and circumstances of each of those cases and had arrived at a conclusion.

9. However, I do not intend to go into the various laws laid down with regard to the entitlement of a workman for the date on which the 17B wages is to commence, since the issue involved in this petition is as to when the payment of 17B wages would commence, "when there is inordinate delay" on the part of the Management in challenging the Award/Rejection of the Approval Petition.

10. Admittedly, this issue has not been addressed by any of the High Courts or the Hon'ble Supreme Court, to the best of my knowledge. In normal circumstances, the 17B wages could be payable from the date on which the Award/Rejection of Approval Petition is challenged before the High Court or the Hon'ble Supreme Court, as held by a Hon'ble Division Bench of this Court in the case of **Tamil Nadu Electricity Board Employees' Co-operative Thrift and Credit Society, Ltd., (rep. by Special Officer), Cuddalore Vs. Labour Court, Cuddalore and another** reported in 1997 (1) L.L.N. 1000. A similar view has also been taken by another Hon'ble Division Bench of this Court in the case of **P.Sivasankara Perumal Vs. The Presiding Officer, Additional Labour Court, Madurai and another** in W.A.No.967 of 1992 dated 16.12.1992. In the case of **Rajeshwar Mahto V. AloK Kumar Gupta, General Manager, Birla Corporation Ltd.**, reported in 2018 (4) SCC 341, the 17B wages was ordered to be paid during the pendency of the proceedings.

11. The Hon'ble Supreme Court in the case of **Dena Bank Vs. Kiritikumar T.Patel** reported in 1998 (1) LLJ 1, had held that the object of Section 17B is to enable the workman to receive the 17B wages during the pendency of the proceedings. The relevant portion of the order reads as follows:-

"22. As indicated earlier Section 17-B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the award of a Labour Court or the Industrial Tribunal during the pendency of the proceedings in which the said award is under challenge before the High Court or the Supreme Court. The object underlying the provision is to relieve to a certain extent the hardship that is

caused to the workman due to delay in the implementation of the award. 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 or this Court."

But when a situation arises where the Management do not reinstate the concerned workman after the Award/Rejection of the Approval Petition, would it be justifiable to allow the Management too belatedly challenge the Award/Rejection order, after many years?

12. The term "delay" referred to above in this context, gains significance. In the objects and reasons for enacting Section 17B of the Act, it was felt that the "delay" in implementation of the Award cause hardships to the workman concerned. This object came to be considered by the Hon'ble Supreme Court in the case of **Bharat Singh Vs. Management of New Delhi Tuberculosis Centre, New Delhi and Others** reported in **1986 (2) SCC 614** in the following manner:-

10. The objects and reasons give an insight into the background why this Section was introduced. Though objects and reasons cannot be the ultimate guide in interpretation of statutes, it often times aids in finding out what really persuaded the legislature to enact a particular provision. The objects and reasons here clearly spell out that delay in the implementation of the awards is due to the contests by the employer which consequently cause hardship to the workmen. If this is the object, then would it be in keeping with this object and consistent with the progressive social philosophy of our laws to deny to the workmen the benefits of this Section simply because the award was passed, for example just a day before the Section came into force? In our view it would be not only defeating the rights of the workman but going against the spirit of the enactment. A rigid interpretation of this Section as is attempted by the learned counsel for the respondents would be rendering the workman worse off after the coming into force of this Section. This section has in effect only codified the rights of the workmen to get their wages which they could not get in time because of the long drawn out process caused by the methods employed by the Management. This Section, in other words, gives a mandate to the Courts to award wages if the conditions in the Section are satisfied."

13. Likewise, in the case of **Dena Bank Vs. Ghanshyam** reported in **2001 (5) SCC 169**, the Hon'ble Supreme Court, while dealing with the scope of Section 17B, held that the provision will not preclude the High Court from granting better benefits. The relevant portion of the order reads as follows:-

"9.The Statement of objects and reasons for inserting the said provision indicates that when Labour Courts pass awards of reinstatement, they are often contested by employers in the Supreme Court and High Courts. To mitigate the hardship that would be caused due to delay in implementation of the award, it was proposed to provide for payment of wages last drawn by the workman concerned from the date of the award till the dispute between the parties is finally decided in the High Courts or the Supreme Court. It follows that in the event of an employer not reinstating the workman and not seeking any interim relief in respect of the award directing reinstatement of the workman or in a case where the court is not inclined to stay such award in toto the workman has two options either to initiate proceeding to enforce the award or be content with receiving the full wages last drawn by him without prejudice to the result of the proceedings preferred by the employer against the award till he is reinstated or proceedings are terminated in his favour, whichever is earlier. In Dena Banks case (supra), this Court elucidated the expression full wages last drawn as follows :

'..The 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 and therefore used the words full wages last drawn.'

10.It may be noticed that [Section 17B](#) of the Act does not preclude the High Courts or this Court under Articles 226 and 136 of the Constitution respectively from passing appropriate interlocutory orders, having regard to the facts and circumstances of the case, in the interests of justice. [Dena Banks case (supra)]. The High Court or this Court may, while entertaining employers challenge to the award, in its discretion, in appropriate cases, stay the operation of the award in its entirety or in regard to back wages only or in regard to reinstatement without interfering with payment

of back wages or on payment of wages in future irrespective of the result of the proceedings before it etc. and/or impose such conditions as to the payment of the salary as on the date of the order or a part of the back wages and its withdrawal by the workman as it may deem fit in the interests of justice. The court may, depending on the facts of a case, direct payment of full wages last drawn under [Section 17B](#) of the Act only by the employer to the workman. The question whether a workman is entitled to the full wages last drawn or full salary which he would be entitled to in the event of reinstatement while the award is under challenge in the High Courts or this Court depends upon the terms of the order passed by the Court, which has to be determined on interpretation of the order granting relief."

14. The consequence of the Management preferring to challenge the Award/Order of Rejection of the Approval Petition after an inordinate delay, would amount to depriving the concerned workman of the last drawn wages for a considerable period, had the Management chose to challenge such orders within a reasonable time. This delay is also against the very object of the enactment of Section 17B, which is for relieving the hardships that would be caused to the workman due to the delay in implementation of the Award, as held in *Dena Bank's case (supra)*. Thus, when the object of Section 17B itself was to provide the payment of last drawn wages to the concerned workman in order to overcome the hardships that could have been caused to him, owing to the delay in implementation of the Award and in the light of the decisions in *Bharath Singh's case (supra)*, as well as in *Dena Bank's case (supra)*, it requires to be held that, in cases where the Management does not have any satisfactory explanation for the delay in challenging the Award/Rejection Order and the delay by itself, could be construed as inordinate in nature, the Management would be obligated to pay the last drawn wages to the concerned workman from the date of the Award, or the date of the rejection order under Section 33 (2)(b). In all other cases, the 17B wages would become payable during the pendency of the proceedings, (i.e.,) from the date of initiation of such proceedings.

15. The term "inordinate delay" referred above, would depend on various facts and circumstances of each and every case. Thus, it would be appropriate that in order to ascertain as to whether the delay in challenging the Award/Rejection Order is inordinate in nature, the facts and circumstances of that case, as well as the reasons for the delay, would play a crucial role.

16. Having held so, the facts and circumstances in the present case was looked into. The affidavit filed in support of the main Writ Petition does not reveal any reasons for the delay of more than

two years. The Approval Petition under Section 33(2)(b) came to be rejected on 31.01.2018 and the Writ Petition was filed after two years and when no satisfactory reasons have been assigned for the delay, it could be said that the delay in this case, is inordinate in nature.

17. In the light of the above observations, the petitioner herein would be entitled for the last drawn wages from 31.01.2018 i.e., from the date on which the Approval Petition in A.P.No.327 of 2013 was rejected. However, such payment of last drawn wages shall be preceded by an affidavit to be filed by the first respondent herein substantiating that he was not gainfully employed from the date of the Award. The Writ Miscellaneous Petition stands allowed accordingly.

18. Registry is directed to post the main Writ Petition for final disposal on 17.11.2021.

-sd/-

01/11/2021

/ TRUE COPY /

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

TO

1 THE MANAGEMENT,  
TAMIL NADU STATE TRANSPORT CORPORATION  
(VILLUPURAM) LTD., KANCHEEPURAM REGION,  
PONNERIKARAI, BANGAPORE NATIONAL HIGHWAY,  
KANCHEEPURAM-631 552.

2 THE SPECIAL JOINT COMMISSIONER OF LABOUR,  
TEYNAMPET, CHENNAI.

Order

in

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IN WP.No.1580 of 2021

Date :01/11/2021

From 26.2.2001 the Registry is issuing certified  
copies of the Interim Orders in this format  
PA (10/11/2021)