

11.07.2023.
Item No.1
Court No.550
Saswata

**W.P.A. 135 of 2020
with
CAN 2807 of 2020
Prabaratak Jute Mills Ltd.
Versus
The Assistant Labour Commissioner & Ors.**

Mr. Diptomoy Talukdar

...For the petitioner

Mr. N.Rakshit

...For the applicant/respondent no. 4

Mr. Gobindo Chandra Baidya

...For the State

In re: CAN 2807 of 2020

1. The application being CAN 2807 of 2020 (CAN 1 of 2020) under Section 17B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “said Act”) has been filed in connection with the present writ application. Records would reveal that the applicant/respondent no. 4 was an employee of the writ petitioner/opposite party and was appointed sometimes in the month of November 1988. It is the case of the applicant/respondent no. 4 that he was obstructed to enter into the premises of the writ petitioner/opposite party and to join his duties on and from 24th May 2011. Questioning such action in the form of refusal of employment and/or his illegal termination, the applicant/respondent no. 4 had raised an industrial dispute in the office of the Labour Commissioner on 5th November, 2014 at Barrackpore.
2. Following the failure in conciliation, the applicant/respondent no. 4 filed an application on 5th June, 2015 under Section 10(1B)(d) of the said Act before the Learned First Industrial Tribunal, West

Bengal (hereinafter referred to as the “Tribunal”). The said proceeding was contested by the writ petitioner/opposite party. On contested hearing, the Tribunal by award dated 25th May, 2019, was, inter alia, pleased to hold that the retrenchment / termination of service of the applicant/respondent no. 4 by the management of the writ petitioner/opposite party with effect from 24th May, 2011 is absolutely illegal and unjustified and consequentially directed reinstatement of the applicant/respondent no. 4 with full backwages.

3. Challenging the aforesaid award, a writ application was filed before this Court which was registered as WPA 135 of 2020. During pendency of the aforesaid writ application, the present application under Section 17B of the said Act had been taken out by the applicant/respondent no. 4. Records would reveal that the writ petitioner despite direction for filing of affidavit, chose not to file any affidavit and ultimately, the writ application was dismissed for default on 16th August, 2022.
4. Mr. Rakshit, learned advocate appearing for the applicant/respondent no.4 submits that the applicant/respondent no. 4 was prevented from enforcing his rights by reasons of pendency of the writ application. By referring to the provisions of Section 17B of the said Act, it is submitted that the applicant/respondent no. 4 has a right, during pendency of the proceedings, to be entitled to the minimum compensation as provided in the statute. He

submits that the applicant/respondent no. 4 since, the date of termination of service till date is unemployed and is suffering from financial crunch without any source of income.

5. It is submitted that despite direction for filing of affidavit, no affidavit-in-opposition has been filed and as such, the writ petitioner/opposite party should be directed to make payment of the minimum guaranteed compensation as provided for in Section 17B of the said Act.
6. Mr. Talukdar, learned advocate appearing for the writ petitioner/opposite party, submits that his client should be given one more opportunity to file affidavit-in-opposition to the present application.
7. Mr. Baidya, learned advocate, enters appearance for the State.
8. Heard the learned advocates appearing for the respective parties and considered the materials on record.
9. For an application under Section 17B of the said Act to succeed, the following conditions must be satisfied:
 - There must be an award passed by the Labour Court / Tribunal directing restatement of workman.
 - There must be a challenge to such award before the Hon'ble Supreme Court or the High Court.
 - There must be an affidavit by the workman, stating that he has not been

employed in any establishments during such period.

10. I find that in this case, there is an award directing reinstatement passed by the Tribunal. The writ petitioner/ opposite party had, in fact, filed an application challenging such award before this Court. I also find that the applicant/respondent no. 4 has affirmed an affidavit and has, inter alia, stated that the applicant/respondent no. 4 since termination of his service till date is unemployed and is suffering from financial crunch without any source of income.

11. Having regard to the aforesaid, I am of the view that the three conditions as indicated hereinabove, stand satisfied.

12. In this context, I must note that the proviso to Section 17B of the said Act, inter alia, provides that if it is proved to the satisfaction of the High Court or the Supreme Court that such workman has been employed and has been receiving adequate remuneration during 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.

13. In this case, the writ petitioner/opposite party despite obtaining directions for filing of affidavit on 17th May, 2022, chose not to file any affidavit. Instead the writ petitioner/opposite party having delayed the execution of the aforesaid award, subsequently chose to withdraw the challenge.

14.I find that the applicant/respondent no.4 has a legal right to enforce the right to claim minimum guaranteed compensation as provided under Section 17B of the said Act.

15.Having regard to the aforesaid, I am of the view that the writ petitioner/opposite party cannot be permitted a further opportunity to file affidavit-in-opposition especially when it is not the contention of the writ petitioner that the applicant is employed or is receiving adequate remuneration. I am also of the view that the right of the applicant/respondent no. 4 to receive minimum guaranteed compensation as provided for under Section 17B of the said Act cannot be defeated by reasons of dismissal of the writ application in the manner as has been done in this case.

16.I find that the last drawn salary of the applicant/respondent no. 4 as per the pay slip was Rs.7670/- per month. Having regard to the aforesaid, I am of the view that the applicant/respondent no. 4 shall be entitled to the last drawn wages as prayed for, for the period for which the writ application was pending i.e., from the date of filing of the writ application till dismissal of the writ petition on 16th August, 2022.

17.The aforesaid amount must be disbursed in favour of the applicant/respondent no. 4 in four equal monthly installments. First of such installments shall be paid on or before 20th of this month and the succeeding installments shall be paid on or before 15th of each

succeeding month till such time the aforesaid amount is fully disbursed.

18. With the above directions and observations, the application being CAN 1 of 2023 (Old CAN 2807 of 2020) is accordingly ***disposed of***.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)