

Item No.5.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 28.11.2022

DELIVERED ON:28.11.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T No.1174 of 2022

with

I.A. No.CAN 1 of 2022

Vijai Shree Private Limited.

Vs.

State of West Bengal & ors.

Appearance:-

**Mr. Soumya Majumder,
Mr. S. K. Singh,
Mr. Ravi Kumar Dubey**

...

for the appellant.

Mr. Laxman Ch. Halder

...

for respondent no.3.

**Mr. Sirsanya Bandyopadhyay,
Mr. Arka Kr. Nag**

....

for the State.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra Court appeal by the writ petitioner is directed against the order dated 8th July, 2022 passed in CAN 1 of 2022 arising out of W.P.A. No.1521 of 2022. The said application was filed by the respondent/workman under Section 17B of the Industrial Disputes Act, 1947 (for brevity, "the Act") praying for a direction upon the appellant / employer to pay the last drawn wages to the workman pending disposal of the writ petition. The writ petition was filed by the appellant challenging an award passed by the learned 2nd Industrial Tribunal, Kolkata in Case No.04 of 2012 dated 29th September, 2021. By the said award, the termination of the respondent / workman vide order dated 1st November, 2011 passed by the appellant was held to be illegal and void. The workman was directed to be reinstated in service as on 29th May, 2011 with full back wages and the appellant was directed to pay the full back wages to the workman from 30th May, 2011 till his reinstatement with a compound interest of 10% per annum on the entire arrears amount of the back wages and the appellant was directed to comply with the direction within 30 days from the date of the order. Apart from that, a cost of Rs.20,000/- was also ordered to be paid.

2. The appellant / management had challenged the award by filing a writ petition before this Court, which was filed on 27th January, 2022. In terms of Section 17B of the Act, the workman would be entitled for payment of full back wages pending the said writ petition and a prayer was made before the learned writ Court by filing an application under Section 17B of the Act. The entitlement of the workman to the last drawn wages under Section 17B of the Act appears to be not in controversy but the issue, which was raised by the appellant / management before the learned Single Bench is as to from what date the workman would be entitled to the last drawn wages, i.e., from the date of the award or the date of filing the writ petition. The learned Single Bench had allowed the application and directed payment of last drawn wages under Section 17B of the Act from the date of the award. Aggrieved by the same, the appellant / management has filed the present intra-Court appeal.

3. The reasons which weighed in the mind of the learned Single Bench for granting such a relief was by referring to the decision of the Hon'ble Supreme Court in the Case of ***Dena Bank Vs. Kiritikumar T. Patel*** reported at ***(1999) 2 SCC 106*** equivalent to ***1998 LAB.I.C. 578 (SC)***. The learned Single Bench also

referred to the decision of the Division Bench of the High Court of Delhi in **Ashok Hotel Vs. Government of NCT of Delhi and Ors.** reported at **2006(1) LLJ 317** Before us, Mr. Soumya Majumder, learned Advocate appearing for the appellant placed reliance on the decision of the learned Single Bench of this Court in the case of **Singer India Ltd. & Ors. Vs. State of West Bengal Ors.** reported at **(1999) 1 LLJ 1009**. In the said decision, the Court held that the last drawn wages payable under Section 17B of the Act shall be allowed to the workman after the writ petition was filed.

4. It is important to note that in **Dena Bank (supra)**, the Hon'ble Supreme Court took note of the objects and reasons for enacting Section 17B of the Act, which reads as hereunder:-

"When Labour Courts pass award of reinstatement, these are often contested by an employer in the Supreme Court or 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."

5. From the above objects and reasons, it is seen that the provision proposed to provide 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 Supreme Court or in the High Courts.

6. In ***Ashok Hotel (supra)***, after taking note of the decision in ***Dena Bank (supra)***, the Division Bench held that last drawn wages have to be paid from the date of the award and not the date on which the writ petition was filed. In ***Ashok Hotel (supra)***, the Court had taken note of certain other decisions apart from the decision in ***Dena Bank (supra)*** and noted that there is discretion vested in the Court exercising jurisdiction under Article 226 of the Constitution of India and by exercise of such discretion, the Court would be entitled to pass a just and equitable order bearing in mind the interest of the workman and also that the management is aggrieved by the award of the Labour Court and the same has been questioned.

7. In our considered view, the legal issue, which has been raised before us could very well be left open as it would require further elaborate submissions and also as to whether the enactment could be interpreted by referring to the statement of objects and reasons and such other matters.

8. As mentioned above, the award was passed by the Industrial Tribunal on 29th September, 2021 and the writ petition was filed on 27th January, 2022, therefore, ends of justice would be met and the workman's interest would also stand protected if for the period from September, 2021 to January, 2022 50% of the last drawn wages is paid to the workman and in addition to payment of last drawn wages from the date of filing of the writ petition till the writ petition is heard and disposed of, would be just and proper.

9. Therefore, this appeal stands disposed of leaving open the legal issue, which was dealt with by the learned Single Bench and with the direction to the appellant / management to pay 50% of the last drawn wages to the workman from September, 2021 to January, 2022 within a period of three weeks from the date of receipt of the server copy of this judgment and order and

continue to pay the last drawn wages from the date of filing of the writ petition till the writ petition is heard and disposed of.

10. We are informed by the learned Advocates for the parties that the writ petition is already appearing in the list of the learned Single Bench. Therefore, we grant liberty to the counsels on either side to make a request to the learned Writ Court for early hearing of the writ petition.

11. With the aforesaid direction, the appeal and the connected application are disposed of.

12. There shall be no order as to costs.

13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)