

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-14997-2017 (O&M)
Date of Decision: 22.12.2023

STATE OF HARYANA THROUGH EXECUTIVE ENGINEER,
PUBLIC HEALTH ENGINEER D&P DIVISION, MODEL TOWN,
SONIPAT

...Petitioner

Versus

SHRI SURENDER SINGH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

Mr. Ankush Goyat, Advocate
for Mr. Ramesh Goyat, Advocate
for respondent No.1.

HARSH BUNGER, J.

1. Petitioner-State of Haryana has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of impugned order dated 27.05.2016 (Annexure P-17) passed by the Labour Court, Panipat.

2. Briefly, respondent No.1-Surender Singh raised an industrial dispute regarding termination of his services, which was referred for adjudication to the Industrial Tribunal-cum-Labour Court, Panipat (here-in-after referred to as 'the Tribunal'). In the claim statement, respondent No.1 pleaded that he was working with the department (Executive Engineer, PWD Public Health, Sonapat) since 1995 on D.C. rates and his services were terminated on 01.04.1997, without complying with the provisions of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). The afore-said reference came to be decided by the learned Tribunal vide an Award dated 14.11.2011 (Annexure P-7); whereby, the reference was

answered in favour of respondent No.1-workman and he was held entitled to reinstatement with continuity of service and 50% back wages from the date of demand notice i.e. 05.12.2003.

3. Being aggrieved against the afore-said Award, the petitioner-State of Haryana challenged the said Award by way of filing writ petition i.e. **CWP-9008-2012** before this Court; wherein vide order dated 15.05.2012, notice of motion was issued and it was further ordered that in the meantime, operation of the impugned Award dated 14.11.2011 (Annexure P-7) shall remain stayed till further orders subject to the provisions of Section 17-B of the 1947 Act.

4. Subsequently, the afore-said writ petition i.e. **CWP-9008-2012** came to be finally decided by this Court vide order dated 18.03.2014 (Annexure P-13); whereby the writ petition was allowed and Award dated 14.11.2011 (Annexure P-7) came to be modified by substituting the amount of compensation of Rs.2 lacs in lieu of reinstatement.

5. As per the petitioner-State of Haryana, the afore-said amount of compensation, as awarded by this Court in **CWP-9008-2012**, was paid to respondent No.1-Surender Singh against a valid receipt dated 18.11.2014 (Annexure P-14).

6. It appears that subsequently on 22.07.2015, respondent No.1-Surender Singh filed an application under Section 33(C)(2) of the 1947 Act, seeking payment of the amount under Section 17-B of the 1947 Act, as per D.C. rate instead of last drawn wages.

7. The afore-said claim of respondent No.1 was contested by the department-State, by filing its reply; wherein it was categorically stated that respondent No.1-Surender Singh had already been paid the “last drawn

wages” (Rs.1433/- p.m.) according to Section 17-B of the 1947 Act, in terms of order dated 15.05.2012 and the following calculation was given :-

S.No.	Time Period	Last drawn wages	Total amount	Payment vide Banker Cheque No. & dated
1	14.11.2011 to 31.3.2013	1433	Rs.23906.00	No.641423 Dt. 05.10.2013
2	01.04.2013 To 28.02.2014	1433	Rs.15763.00	No.651146 Dt. 18.11.2014

8. The aforesaid application under Section 33(C)(2) of the 1947 Act filed by respondent No.1-Surender Singh, came to be finally decided by the Tribunal below vide order dated 27.05.2016 (Annexure P-17) by observing as under :-

“7. On the other hand, Ld. Authorised Representative for the respondent has referred to affidavit filed by MW-1 Raj Pal Dhiya, SDE, PHE, Sub Division No.4, Sonapat, who deposed that the workmen was paid the amount @ last wage drawn which was Rs.1433/- from 14.11.2011 to 28.2.2014 and attached Ex. R-1 and Ex. R-2 and averred that present application is liable to be dismissed and present application under Section 33-C(2) is not competent as the proceedings are in the nature execution proceedings.

8. The case of respondent is that they have paid wages @ Rs.1433.00 for the period from 14.11.2011 to 31.3.2013 and 1.4.2013 to 28.2.2014 as Rs.23906 and Rs.15763.00 respectively for above two spells. The claim of the workman is that he is entitled to claim 17-B amount for this period @ minimum wage as declared by Government of Haryana from time to time. The workman has thus claimed balance amount of Rs.1,31,188.97 paise through present application.

9. *The only moot point for consideration in this case is as to whether workman is entitled to claim the amount on minimum wage for the period under section 17-B of ID Act or on the basis of for last wage drawn as asserted by respondent. The workman has cited judgment in the case of Jaswant Singh Vs. The Presiding Officer, Labour Court Gurdaspur and others reported in 2012(4) RSJ-56 of Punjab & Haryana High Court in which it is held that workman is entitled to claim wages at the rate of current minimum wage. The AR of workman vehemently argued that in view of the law laid down the claim on the basis of minimum wage of relevant period is admissible in his favour. The has further referred to another judgment of Delhi High Court in the case reported in 2012 II-CLR-638 in the case of Kiran Uppal (Mrs.) Prop. M/s CLAS Vs. Ashok Kumar & ors. wherein it is held that the applicant respondents are entitled to minimum wages applicable from time to time u/s 17-B of ID Act.*

10. *In view of the case law cited by the workman the present application under Section 33-C(2) claiming the amount under Section 17-B is at the rate of minimum wage as notified by Haryana Government from time to time is allowed and respondent is directed to pay difference wages i.e. amount actually paid and current wage difference on the basis of minimum wage which comes to Rs.1,13,282.97 within six months from the date of passing of this order failing which workman will be entitled to claim interest @ 9% per annum till payment is made or realized. Thus issue No.1 is decided in favour of applicant/workman and against respondent.*

RELIEF

11. *As a sequel to my finding on the issue, as discussed in the receding paragraphs, it follows that the present application is allowed. Workman is entitled to claim balance amount of Rs.1,13,282.97 within six months*

from the passing of this orders, failing which the workman will be entitled to claim interest @ 9%. File be consigned to the record room after due compliance.”

9. In the afore-mentioned circumstances, the State of Haryana has filed the instant writ petition before this Court.

10. It may be noticed here that on 13.07.2017, notice of motion was issued in this case and order dated 27.05.2016 (Annexure P-17) was stayed till the next date of hearing.

11. Learned State counsel has submitted that the Tribunal below has erred in law and fact in passing the impugned order dated 27.05.2016 (Annexure P-17). It is submitted that the Tribunal had committed a grave error in not considering the law settled by the Hon'ble Supreme Court in the case of ***Dena Bank vs Kirtikumar T. Patel, JT 1997(9) S.C. 167*** wherein, the Hon'ble Supreme Court while considering the meaning of the term “full wages last drawn” has held the same to mean the wages that were actually paid and not the amount that would be payable, are required to be paid. It is submitted that the Tribunal below has allowed the application under Section 33(C)(2) of the 1947 Act, by holding that respondent No.1 is entitled to the present minimum wages instead of last drawn wages, as per Section 17-B of the 1947 Act by ignoring the law laid down by the Hon'ble Supreme Court; therefore, the impugned order was unsustainable in the eyes of law. Accordingly, it is prayed that the instant writ petition be allowed by setting aside the impugned order dated 27.05.2016 (Annexure P-17).

12. On the other hand, learned counsel appearing for respondent No.1 has opposed the prayer made on behalf of the learned State counsel by submitting that there is no illegality or perversity in the impugned order and

the judgment relied upon by the learned State counsel, is not applicable to the facts of the instant case. It is submitted that the impugned order does not call for any interference by this Court in exercise of its writ jurisdiction. Accordingly, prayer has been made for dismissal of the writ petition.

13. I have heard learned counsel for the parties and have perused the paper book with their able assistance.

14. *In Dena Bank v. Kiritikumar T. Patel*, Hon'ble Supreme Court while considering the expression "full wages last drawn" in Section 17B of the Industrial Disputes Act, 1947, held as under:-

2. The question that falls for consideration in this appeal is whether the expression "full wages last drawn" in Section 17B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') means wages drawn by a workman at the time of termination of his employment or wages which he would have drawn on the date of the award.

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6. It would be convenient at this stage to set out the provisions contained in Section 17B of the Act which reads as under :

Section 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 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."

The objects and reasons for enacting the said provisions were as follows :

"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."

It would thus appear that the object underlying the enacting of the provisions contained in Section 17B is to give relief to the workman in whose favour an award of reinstatement has been passed by the Labour Court and the said award is under challenge in the High Court or this Court. The said relief has been given with a view to relieve the hardship that would be caused to a workman on account of delay in implementation of the award as a result of the pendency of the proceedings in the High Court or this Court. The question for consideration is : what is the extent to which such relief has been granted to a workman under this provision ? The objects and reasons do not indicate an answer to this question and its answer

has to be found in the provisions of the enactment. Since the expression "full wages last drawn" in Section 17B has been construed by the various High Courts in the decisions referred to above we would briefly refer to the same.

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17. As per the decisions of the High Courts referred to above the expression "full wages last drawn" in Section 17B can mean as under :

(i) wages only at the rate last drawn and not at the same rate at which the wages are being paid to the workmen who are actually working. [Daladdi Coop. Agriculture Service Society Ltd. v. Gurcharan Singh].

(ii) Wages drawn on the date of termination of the services plus the yearly increment and the Dearness Allowance to be worked out till the date of the award. [Vishveswaraya Iron and Steel Ltd. v. M. Chandrappa and another and Kirtiben B. Amin v. Mafatlal Apparels].

(iii) Full wages which the workman was entitled to draw in pursuance of the award and the implementation of which is suspended during the pendency of the proceedings. [Carona Sahu Co. Ltd. v. A.K. Munakhan and others, Macneil and Magor Ltd. v. 1st Additional Labour Court and another and P. Channaiah v. Dy. Ex. Eng.]

18. The first construction gives to the words "full wages last drawn" their plain and material meaning. The second as well as the third constructions read something more than their plain and material meaning in these words. In substance these constructions read the words "full wages last drawn" as "full wages which would have been drawn". Such an extended meaning to the words "full wages last drawn" does not find support in the language of Section

17B. Nor can this extended meaning be based on the object underlying the enactment of Section 17B.

19. As indicated earlier Section 17B 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 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. Since the payment is of such a character 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". To read these words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his services had not passed since it has been set aside by the award of the Labour Court or Industrial Tribunal, would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is under challenge. Since the amount is not refundable or recoverable in the event of the award being set aside it would result in the employer being required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. We are unable to construe the provisions contained in Section 17B to cast such a burden on the employer. In our opinion,

therefore, the words "full wages last drawn" must be given their plain and material meaning and they cannot be given the extended meaning as given by the Karnataka High Court in Visveswaraya Iron & Steel Ltd. (supra) or the Bombay High Court in Carona Sahu Co. Ltd. (supra).

20. Shri Jitendra Sharma has laid emphasis on the word "full" in the expression "full wages last drawn" and has submitted that the said words implies that the wages last drawn must be the wages which the workman would have drawn under the award. We are unable to agree. In our opinion, the expression "full" only emphasizes that all the emoluments which are included in "wages" as defined in clause (ii) of section 2 of the Act so as to include the amounts referred to in sub-clauses (i) to (iv) are required to be paid. In this context, it may also be mentioned that in Section 17B Parliament has also used the words "inclusive of any maintenance allowance admissible to him under any rule". These words indicate that maintenance allowance that is admissible under any rule is required to be paid irrespective of the amount which was actually being paid as maintenance allowance to the workman. But with regard to wages Parliament has used the words "full wages last drawn" indicating that the wages that were actually paid and not the amount that would be payable are required to be paid..."

15. Even otherwise, in case, the respondent No.1 has any grievance that the payment in terms of Section 17-B of the 1947 Act, as ordered by this Court in the earlier writ petition, has not been paid to him, then, he could have raised the said issue in the earlier writ petition before the matter came up for final adjudication. Moreover, in my considered view, the payment in terms of Section 17-B of the 1947 Act was ordered to be made by way of an interim measure passed in the earlier writ petition. However, once the said writ petition has been finally adjudicated by holding that respondent No.1

was entitled to compensation of Rs.2 lacs instead of reinstatement; accordingly, the interim order dated 15.05.2012 stood merged with the final order.

16. Be that as it may, the term “full wages last drawn” having already been interpreted by the Hon’ble Supreme Court to mean that the wages that were actually last paid to the workman, which in the instant case, is Rs.1433/- p.m; therefore, respondent No.1 could not claim the claimed amount on the basis of minimum wages for the two spells between 14.11.2011 to 31.03.2013 and 01.04.2013 to 28.02.2014.

17. In view of above discussions, the instant writ petition is allowed and the impugned order dated 27.05.2016 (Annexure P-17) passed by the Tribunal is quashed.

18. All pending application/s, if any, shall also stand closed.

December 22, 2023

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No