

28.11.2024.
Item No. 5.
Court No. 13
sp

FMA 839 of 2023
With
CAN 1 of 2023

M/s. Karan Global Security & Services Pvt. Ltd.

-Versus-

The State of West Bengal & Ors.

Mr. Anindya Lahiri,
Mr. Samit Bhanja

...for the appellant

1. Despite service of notice, the workman is not represented. Affidavit of service and supplementary affidavit filed in Court today are taken on record.
2. The instant appeal is directed against the judgment dated 12.07.2023 passed by the learned Single Bench of this Court.
3. The writ petition was filed by the employer, challenging the award dated 30th August, 2022, whereby the workman was directed to be reinstated with 50% backwages from 1st November, 2011 and all other consequential benefits.
4. After the writ petition was filed, the workman filed an application under Section 17B of the Industrial Disputes Act, 1947, praying for last drawn wages from the date of the award till disposal of the writ petition.
5. The learned Single Bench had directed that the wages to the workman shall be paid from the date of publication of the award, i.e., 20th October, 2022 till disposal of the writ petition or until further orders, whichever is earlier.

6. The Hon'ble Supreme Court in the case of ***Regional Authority, Dena Bank Vs. Ghanshyam*** reported in ***2001 5 SCC 169***, particularly, at paragraph 12 has held that the benefit under Section 17B of the Industrial Disputes Act, 1947, must be afforded to the workman from the date of passing of the award.

7. Mr. Anindya Lahiri, learned counsel for the appellant would rely upon a decision of a Single Bench of this Court in the case of ***Levcon Instruments (Private) Ltd. and another vs. State of West Bengal and others*** reported in ***2002 (2) L.L.N. 564***, particularly, paragraph 15 thereof where it is held that the benefit under Section 17B of the I.D. Act is payable to the workman only from the date of filing of the writ petition by the employer.

8. The Single Bench in the Levcon case (supra) has distinguished the decision of the Supreme Court in the case of ***Regional Authority, Dena Bank (supra)***. The Single Bench in the ***Levcon Instruments (Private) Ltd. and another (supra)*** appears to have ignored paragraph 12 of the ***Regional Authority, Dena Bank (supra)***.

Paragraph 12: we have mentioned above that the import of Section 17-B admits of no doubt that Parliament intended that the workman should get the last-drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the Statement of Objects and Reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17-B was inserted in the Act. We have also pointed out above that Section 17-B does not preclude the High Courts or this Court from granting better benefits – more just and

equitable on the facts of a case than contemplated by that provision to a workman. By an interim order the High Court did not grant relief in terms Section 17-B, may, there is no reference to that section in the orders of the High Court, therefore, in this case the question of payment of “full wages last drawn” to the respondent does not arise. In the light of the above discussion the power of the High Court to pass the impugned order cannot but be upheld so the respondent is entitled to his salary in terms of the said order.

9. Mr. Lahiri would argue that since the observations in paragraph 12 was not germane to the main question being addressed in the ***Regional Authority, Dena Bank (supra)***, the same must be considered as obiter dicta.

10. It is true that the question as to when the benefit under Section 17B shall accrue to the workman, i.e., from the date of award and/or from the date of publication or from the date of filing of the writ petition before the Hon’ble Supreme Court in the ***Regional Authority, Dena Bank (supra)*** was not an issue.

11. Having given anxious consideration to the issue, this Court is of the view that from which date the amount under section 17B shall be paid would depend on how soon a workman makes an application after the employer challenge the award in the High Court or the Supreme Court as the case may be. If the workman had applied before the High Court soon after the notice of the challenge made by the employer, the amount for the purposes of section 17B shall be computed from the date of the award. If however there

is an inordinate delay on the part of the workman in taking out the said application, the High Court or the Supreme Court may exercise discretion while granting the amount for the purposes of section 17B either from the date of the application so made by the workman or from the date of award or from the date of the filing of the writ petition. In this regard, reference may be made to the decision of the Division Bench of the Delhi High Court in **United Poly Engineering (P) Ltd. v. Labour Court, 2023 SCC Online Del 369 in para 20:**

12. However, it may be necessary to point that even without an application from the workman under Section 17(b) of the Act of 1947, the High Court or the Supreme Court in exercise of Article 226/32 can suo moto pass appropriate orders granting subsistence payment/allowance to the workman as a condition precedent for the stay of the award challenged by the employer or the workman if on the affidavit filed by the workman the court is satisfied that he is not and was not gainfully employed during the pendency of the writ proceedings. It may be further noted that this discretionary power may be exercised de hors/irrespective of Section 17(b) of the Act of 1947. I Reference in this regard may be made to the decision of the **Hon'ble Supreme Court in Dena Bank v. Kiriti Kumar T. Patel, (1999) 2 SCC 106 and para no. 20 of United Poly (supra).**

23. As regards the powers of the High Court and the Supreme Court under Articles 226 and 136 of the Constitution, it may be stated that Section 17-B, by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge to the award of the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of the award being set aside, does not in any way preclude the High Court or the Supreme Court to pass an order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a direction would be dehors the provisions contained in Section 17-B and while giving the direction, the court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in *Elpro International Ltd.* [1987 Lab IC 1468 : (1987) 2 LLJ 210 : (1987) 1 LLN 695] that in exercise of the power under Articles 226 and 136 of the Constitution, an order can be passed denying the workman the benefit granted under Section 17-B. The conferment of such a right under Section 17-B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution.

13. Under Section 17(b) any payment ordered is from the date of the award and not from the date of the publication of the award since publication of an award is a ministerial act.

14. However, it appears to this Court that since after the award was published, the workman has entered into a settlement with the employer before the Id. Deputy ALC on 20th September, 2023 whereby he has joined the service of the appellant and has actually so

joined. The appellant has been paid adhoc sum of Rs. 2 Lakh and he is being regularly paid his monthly salary and all and every allowance that he has been getting before the termination of his service by the employer.

15. The aforesaid are even subsequent to the impugned order passed by the Single Judge. They have been brought on record by way of supplementary affidavit by the appellant.

16. Hence, the need for any payment under Section 17B of the I.D. Act, 1947 to the workman cannot arise. The writ petition is still pending. The entitlement, if any, to the workman under the aforesaid award, is subject to final decision of the writ petition.

17. In that view of the matter, the order under Section 17B passed by the learned Single Bench dated 12th July, 2023 is no longer required and hence shall stand set aside. The impugned award dated 30th August, 2022 shall remain stayed until disposal of the writ petition by the Single Bench, on the workman being continuously engaged until his superannuation.

18. With the aforesaid observations, F.M.A. 839 of 2023 shall stand disposed of.

19. In view of the above, CAN 1 of 2023 shall also stand disposed of.

20. There shall be no order as to costs.

21. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)

(*Ajay Kumar Gupta, J.*)