

(2001) 09 P&H CK 0142

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 11849 of 1999Municipal Committee,
Mohindergarh

APPELLANT

Vs

Presiding Officer, Labour Court,
Gurgaon and AnotherRESPONDENT

Date of Decision: Sept. 7, 2001**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 17B

Hon'ble Judges: S.S. Sudhalkar, J; Mehtab S. Gill, J**Bench:** Division Bench**Advocate:** A.P. Manchanda, for the Appellant; Sudhir Mittal, for the Respondent

Judgement

S.S. Sudhalkar, J.

The petitioner has filed the writ petition challenging the award of the Labour Court dated 6.4.1999 vide which the workman was held entitled to reinstatement with continuity of service and full back wages. This writ petition was allowed on 5.12.2000 and the award of the Labour Court qua the petitioner-Municipal Committee was set-aside (the writ petition was filed by the Municipal Committee only). After the decision of the writ petition the applicant workman-respondent in the petition has filed this application for wages u/s 17-B of the Industrial Disputes Act, 1947 (for short, "the Act"). The question that arises in this application is whether this court can entertain such an application after the decision of the writ petition.

2. Learned counsel for the applicant argued that the amount can be awarded in view of the provisions of section 17-B of the Act. While the counsel for the petitioner argued that this application cannot be entertained after the decision in the writ petition. Section 17-B of the Act, is as under:-

"17-B. Payment of full wages pending proceedings in higher courts.- Where in any case, a Labour Court, Tribunal or National Tribunals 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 of part thereof, the Court shall order that no wages shall be payable under this section of for such period or part, as the case may be."

3. It is clear from the provision of this Section that amount is to be paid for the purpose of maintenance. The workman is entitled to the amount under this Section and there is no provision in this Section that he cannot claim the amount after the writ petition before the High Court, is over. It may so happen that workman might have earned for his maintenance during the pendency of the writ petition or he might have spent the amount himself but if he was entitled to this amount for the purpose of maintenance, his right cannot be said to have terminated on the termination of the proceedings before the High Court. Learned counsel for the applicant-workman has cited the case of Dena Bank vs. Kiritikumar T. Paid AIR 1998 S.C. 511. Though the facts of the case were different. The Supreme Court has decided in that case that "full wages last drawn" would not mean the wages which the workman would have drawn on the date of award . of re-instatement. This judgment goes to show that the rate of wages to be considered u/s 17B of the Act is the wages last drawn by him and not the wages which should have been entitled on the reinstatement as per the award. Therefore, the payment of wages is restricted to the rate of the wages last drawn. This also goes to show that it is only for providing maintenance that this provision has been added in the Industrial Disputes Act. It has been held by the Supreme Court in the above mentioned case that the relief be 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.

4. On 23.9.1991, the motion Bench while ordering notice of motion in the main petition has stayed the amount awarded. Therefore, whatever hardship that has been caused by staying the amount has to be eased and that can be done under the provisions of Section 17-B of the Act. As stated earlier, there is no provision by which the order u/s 17B can be restricted only to the application filed during the pendency of the writ petition.

5. In view of the above reasons, we find that there is no bar to entertain this application.

6. Learned counsel for the petitioner - employer has argued that the implementation of the award was stayed during the pendency of the writ petition and, therefore, the amount cannot be awarded to the workman. However, when the award for re-instatement and it is stayed, then only the workman would be required to file an application u/s 17-B of the Act, otherwise he would earn his livelihood if he was reinstated. It may be noticed that by the order u/s 17-B, the workman is not awarded back wages i.e. the wages from the date of termination till the date of filing of the writ petition before the High Court. Therefore, even if the execution of the award is stayed, there is no bar in awarding the amount u/s 17-B of the Act.

7. Learned counsel for the petitioner - employer argued that the workman was never employed by the petitioner. However, the facts to be seen that there was an award (to re-instate the applicant) against the petitioner and that is the material fact which has to be considered for making order u/s 17-B of the Act.

8. Learned counsel for the petitioner argued that the applicant workman had filed application u/s 17-B of the Act during the pendency of the writ petition also and hence this application is not maintainable. It is not shown that this Court had earlier allowed or dismissed the application or that any amount was paid to the applicant-workman, for the period of pendency of the writ petition.

9. No other ground has been argued.

10. In view of the above reasons, we find that the objection raised by the counsel for the petitioner i.e. the employer to this application cannot be sustained. In view of the provision of Section 17-B of the Act, the applicant is entitled to the amount. As a result, this application is allowed. The petitioner-employer is directed to pay to the applicant-workman the amount of wages for the period of pendency of the writ petition at the rate of the wages last drawn by him at the time of termination. Of course, if the applicant was paid by other respondents before the Labour Court for the above mentioned period, the amount so paid shall be given credit of.

Sd/- Mehtab S. Gill, J.