

(2014) 05 JH CK 0020

Jharkhand High Court

Case No: L.P.A. No. 249 of 2013

Their Workman

APPELLANT

Vs

Employer in relation to the
Management of Sijua Area of
Bharat Coking Coal Limited

RESPONDENT

Date of Decision: May 13, 2014

Acts Referred:

- Constitution of India, 1950 - Article 227
- Industrial Disputes Act, 1947 - Section 10, 17B

Citation: (2014) 142 FLR 746 : (2015) 1 JLJR 11 : (2014) 3 LLJ 24 : (2014) LLR 1041

Hon'ble Judges: Dhirubhai Naranbhai Patel, J; Amitav Kumar Gupta, J

Bench: Division Bench

Advocate: Ashok Kumar Sinha, Advocate for the Appellant; Anoop Kr. Mehta, Advocate for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.

Counsel for the appellant submitted that as per Section 17-B of the Industrial Disputes Act, 1947, the employees are entitled to the last drawn wages from the date of the award i.e. 16th July, 2012. It is the Management who has preferred a writ petition and, therefore, last wage drawn cannot be from the date of the writ petition, otherwise, lethargic employer will come to the High Court under Article 227 of the Constitution of India after one decade and the employee will get last wage drawn as per Section 17-B of the Industrial Disputes Act, 1947 after one decade. This is not the law at all. Counsel for the appellant has relied upon a decision rendered by Hon'ble Supreme Court in [Regional Authority, Dena Bank and Another Vs. Ghanshyam, .](#) It is further submitted by the counsel for the appellant that this employee is entitled to Rs. 15,873.73 per month from 16th July, 2012. This aspect of the matter has not been properly appreciated by the learned Single Judge. Counsel for the respondent submitted that no error has been committed by the learned

Single Judge in awarding the last wage drawn as per Section 17-B of the Act from the date of filing of the writ petition within six weeks, in view of the fact that there was a dispute about the date of birth of the employee. The date of birth of the employee is 13th December, 1942, whereas, the employee is claiming the date of birth as 13th December, 1953 and, therefore, an industrial dispute was raised under the Industrial Disputes Act, 1947. Reference was made to the Industrial Tribunal No. 1, Dhanbad on 14.02.2007 and the learned Tribunal passed an award in favour of the employee dated 16th July, 2012. This award was published on 26th July, 2012 and was sent to the Labour Court and the Labour Court had sent the said award to the employer which was received by the employer on 28th September, 2012 and immediately thereafter on 04.03.2013 the writ petition being W.P. (L) No. 1450 of 2013 was instituted by the Management and the same was admitted and, thereafter, under Section 17-B from the date of filing of the writ petition last wage drawn was directed to be paid by the Management to the employee and the award passed by the learned Tribunal, Dhanbad was stayed. In fact, even as per the date of birth of the employee, he has already retired in December, 2013 upon reaching the age of superannuation i.e. 60 years and, therefore, this L.P.A. may not be entertained by this Court.

2. Having heard both sides and looking to the facts and circumstances of the case, were hereby quash and set aside the order passed by the learned Single Judge in I.A No. 3678 of 2013 dated 26th June, 2013 passed in W.P. (L) No. 1450 of 2013 mainly for the following reasons:

i) The employee raised an industrial dispute about his date of birth. As per the employee, his date of birth is 13th December, 1953, whereas, as per the Management, his date of birth is 13th December, 1942.

ii) Reference was made under Section 10 of the Industrial Disputes Act, 1947 on 14th February, 2007 and the term of the reference reads as under:

Whether the action of the management of Tetulmari Colliery of BCCL in superannuating Sh. Karam Chand Prasad w.e.f. 31.12.2002 is legal and justified? If not, to what relief is the concerned workman entitled?

iii) This reference was made to Industrial Tribunal No. 1, Dhanbad and on the basis of the evidences on record and on the basis of National Coal Wage Agreement and such other evidences like Form-B Register, which is maintained by the employer, etc, the award was passed in favour of the employee and the date of superannuation w.e.f. 31st December, 2002 was held as illegal and unjustified and the employee was ordered to be reinstated with full back wages and with other consequential benefits vide award dated 16th July, 2012.

iv) It appears that the Management has challenged this award passed by the Industrial Tribunal No. 1, Dhanbad in Reference No. 14 of 2007 on 4th March, 2013 by way of the writ petition being W.P. (L) No. 1450 of 2013. The award has been

stayed by the learned Single Judge and in I.A. No. 3678 of 2013 under Section 17-B of the Industrial Disputes Act, 1947, an order has been passed to make payment of last wage drawn from the date of filing of the writ petition within six weeks.

v) It appears that by virtue of the order passed by the learned Single Judge, a premium is paid to the lethargic approach to the employer. If this law is allowed, there can be any delay by the employer in challenging the award passed in favour of the employee and there shall be payment under Section 17-B of Industrial Disputes Act, 1947 from the date of filing of the petition. Two things cannot go together, namely the lethargic approach of the employer and the payment of last wage drawn under Section 17-B of the Industrial Disputes Act, 1947 from the date of filing of the writ petition. For ready reference, Section 17-B of the Industrial Disputes Act, 1947 reads as under:

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 nay such period or part thereof, the Court shall order that no wages shall be payable under this section for such period of part, as the case may be.

vi) It has been held by the Hon"ble Supreme Court in the case of [Regional Authority, Dena Bank and Another Vs. Ghanshyam](#), as under:

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 the 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 interim order the High Court did not grant relief in terms of Section 17-B, nay, 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.

(emphasis supplied)

vii) In view of this decision also, the employee is entitled to last wage drawn in terms of Section 17-B from the date of the award. In the facts of the present case, the date of award is dated 16th July, 2012. Merely because the employer is filing at a belated stage a writ petition challenging the award passed by the Industrial Tribunal, that does not mean that employee should not get the wages from the date of the award.

viii) It has been stated by the counsel for the appellant that in their application under Section 17-B, i.e. I.A No. 3678 of 2013 which is preferred by the employee, in paragraph 5 it has been mentioned by the employee that under Section 17-B of the Act, he is entitled to Rs. 15,873.73 per month. It appears that this fact stated in paragraph 5 about Rs. 15,873.73 has not been denied by the Management.

3. As a cumulative effect of the aforesaid facts, reasons, the provisions of the Industrial Disputes Act, 1947 and the judicial pronouncement, as stated herein above, this L.P.A. is allowed. The order passed in I.A. No. 3678 of 2013 dated 26th June, 2013 is hereby quashed and set aside and the employ, namely Karam Chand Prasad, is entitled to last wage drawn in terms of Section 17-B of the Industrial Disputes Act, 1947 from the date of award passed by the Industrial Tribunal No. 1, Dhanbad i.e. 16th July, 2012. This calculation will be made by the employer within four weeks from today and shall make payment within a further period of four weeks in the account of the employee by account payee cheque. This amount will be paid in accordance with law. L.P.A. is allowed and disposed of.