
(2004) 09 CAL CK 0074

Calcutta High Court

Case No: A.S.T. No. 1309 of 2004

Shalimar Paints Ltd. and Others

APPELLANT

Vs

Andrew Francis and Others

RESPONDENT

Date of Decision: Sept. 13, 2004

Acts Referred:

- Industrial Disputes Act, 1947 - Section 17B

Citation: (2005) 1 CHN 129 : (2005) 1 LLJ 85

Hon'ble Judges: Rajendra Nath Sinha, J; D.K. Seth, J

Bench: Division Bench

Advocate: P.P. Banerjee and R. Upadhyay, for the Appellant; Manas Sinha and Santana Pollya, for the Respondent

Judgement

D.K. Seth, J.

In re: A.S.T. 1321 of 2004.

In this application, four points have since been raised in connection with the appeal arising out of the order dated July 21, 2004 passed by the learned single Judge in C.A.N. 4700 of 2003 arising out of a writ petition being W.P. No. 7823 (W) of 2003 granting relief u/s 17-B of the Industrial Disputes Act, 1947. However, we are dealing with two points as hereafter. So far as other two points that have been raised by Mr. Banerjee, are kept open to be agitated in the writ petition itself. In our view, if we decide those two points, in that event, we will be deciding the issues involved in the writ petition. Therefore, we refrain from making any observation on those two points.

2. The first point that has been raised by, Mr. Banerjee is that since his client had offered re-employment to the alleged workmen (though according to him the respondent No. 1 is not a workman but a managerial staff) and the respondent had refused the reinstatement or re-employments as such he is not entitled to take the benefit of Section 17-B of the Industrial Disputes Act. The learned counsel for the

respondent on the other hand points out that the offer was not a genuine offer. On affidavit it has been pleaded by his client that when he went to the office of the appellant/respondent, he was treated shabbily.

3. Mr. Banerjee insists that this question should be dealt with by this Court since very often such question arises in many cases. It appears that Section 17-B was introduced to protect personnel from penury. It is a kind of solution to keep the body and soul together so as to enable an employee to continue his case, against the mighty employer. Such a right when given by the legislation, the legislature had intended, to provide such benefit to a person having an award in his favour when challenged before this Court; the benefit of Section 17-B, which is otherwise available, cannot be denied simply on the ground that merely an offer was made on behalf of the employer. The question is dependent not only on the question as to whether the offer is genuine and whether there is something absurd in this offer or not, the question is dependent on various other factors as well which are to be weighed by the Court while considering the offer. But for that a complete adjudication would be necessary. But the relief claimed u/s 17-B being interlocutory in nature in the form of an opinion subject to the result or the final outcome, as the case may be, it might be decided by the Court on the basis of the affidavits. In case, it is not so seriously disputed and there are reasonable materials before this Court to form an opinion that the offer is not genuine, in that event, such offer will not stand in the way of entitlement of an employee to receive the benefit of Section 17-B.

4. Having regard to the above principle and the materials placed before us, it appears that there was an offer of re-employment from the employer. But in the affidavit, it has been pointed out that when the employee went to the office of the employer, he was treated shabbily. It is very difficult to believe or disbelieve one or the other version. But having regard to the situation and the materials placed, we are prepared, in this case, to believe the statement made by the employee; and as such in this case we hold that the employee is entitled to the benefit u/s 17-B despite offer of employment given by the employer. Such a question may also be dependent on the conditions on which the employment might have been offered and would be subject to the result of the writ petition or ultimate outcome of the validity of the award. If re-employment is genuinely offered and the employee is allowed to perform or discharge his duties without being coerced in any manner, in that event, the offer would be treated as a genuine one. Even then if any dispute arises, the same may be thrashed out in the High Court, if necessary, by obtaining direction upon the Labour/Industrial Court to decide the matter on evidence that might be advanced by the parties before it within the time stipulated and return such finding to this Court for taking appropriate decision.

5. We also find that this is not a case where we should remit the matter to the Tribunal for deciding the disputed question raised before us having regard to the

facts and circumstances of the case.

6. Now turning to the second point about the last pay drawn, it appears that u/s 17-B, the relief is available on the basis of the last pay drawn. That the learned Tribunal had found that the petitioner was drawing a salary of Rs. 5,642/- and that was also mentioned in the offer of employment, but in the Affidavit-in-Opposition, the employer has pointed out that the last pay drawn was Rs. 4,070/- which is evident from the salary sheet of July 27, 2000. Admittedly, the employee was terminated on May 15, 2001. Therefore, this document may not be an evidence to show the last pay drawn. But then this document is produced to prove the statement made on oath in the Affidavit-in-Opposition that this Rs. 4,070/- was the last pay drawn. The document that is at page 133 bears the signature of the employee. The learned counsel for the employee points out that it was not the last pay drawn. The last pay drawn was Rs. 5,723/-, which was held by the learned Tribunal as well as also by the learned single Judge and as such, sitting on appeal, this Court cannot interfere in an interlocutory appeal arising out of an interlocutory matter. But the fact remains that in the Affidavit-in-Reply the employee has not come out with a specific and clear statement that his last pay drawn was Rs. 5,642/- when his service was terminated. He denied only the statement and reiterated the statements made in the writ petition. When an allegation is made with specific averments, the same has to be denied specifically and is to be asserted on oath with specific statement, but this has not been done.

7. In any event, the finding, arrived at with regard to the last pay drawn, is tentative for deciding the application u/s 17-B for the time being. This point with regard to the last pay drawn so remains open and if the employee is able to prove that the last pay drawn was Rs. 5,642/- (sic), in that event, the employer shall be liable to pay at the rate of Rs. 5,642/- and the arrears if any by reason of the present order at the rate of Rs. 40707 immediately within one month from the date of such decision by the appropriate authority at an appropriate stage. Since there is no documentary proof and the statement made on oath without being refuted specifically, we accept for the time being that Rs. 4,070/- was the last pay drawn. Therefore, the employer shall go on paying month by month at the rate of Rs. 4,070/- u/s 17-B to (he employee with effect from the date as directed in the order dated July 21, 2004 appealed against and continue to do so until further order or till the decision by the learned single Judge whichever is earlier or otherwise, as the case may be.

8. The other point that whether such payment is to be made from the date of the award or from the date on which the learned single Judge had directed is hereby kept open to be agitated before the learned single Judge at the time of hearing of the writ petition. This order, which we have passed, shall, however, be subject to the final order that might be passed by the learned single Judge in the writ petition. All points are hereby kept open.

9. Since the parties had addressed on the merits of the appeal while addressing the Court on the application for interim order, by consent of the parties the appeal is treated as on day's list and the appeal is also disposed of in terms of the above order while disposing of the application for interim order.

10. This order will not prevent the employee from agitating the points relating to relief u/s 17-B of the Industrial Disputes Act either from the date of the award or from the date of the filing of the writ petition, the same may be decided by the learned single Judge.

11. Xerox certified copy of this order, if applied for, be given to the parties on priority basis.

Rajendra Nath Sinha, J.

12. I agree.