

**SUPREME COURT OF INDIA**

Kaivalyadham Employees Association

Vs.

Kaivalyadham S.M.Y.M. Samity

C.A.No.480 of 2009

(Altamas Kabir and Cyriac Joseph JJ.)

28.01.2009

**ORDER**

1. Leave granted.

2. This appeal is directed against the judgment and order dated 3rd October, 2006, passed by the Bombay High Court in Letters Patent Appeal No.200/2006 arising out of Civil Application No.2481/2005 in Writ Petition No.4000/2005.

3. At the very outset, it may be indicated that since then, the Writ Petition has been finally disposed of by an order dated 7th May, 2007 and another Letters Patent Appeal No.138/2007, filed by the respondent Samity, is pending before the High Court.

4. The appellant Association raised an industrial dispute relating to the retrenchment orders passed against some of its members and, while passing an Award on 2nd March, 2005, the Industrial Court directed reinstatement of the concerned employees within one month from the date of the publication of the Award. Feeling aggrieved by the said Award, the respondent Samity filed Writ Petition No.4000/2005 before the Bombay High Court. The same was admitted and the implementation of the Award was stayed by the High Court by its order dated 21st July, 2005. Since the Award regarding reinstatement was stayed, the appellant Association moved Civil Application No.2481/2005 in the Writ Petition praying for the benefit under Section 17B of the *Industrial Disputes Act, 1947*, to be extended to the successful workmen who had been directed to be reinstated.

5. After considering the affidavits filed on behalf of the workmen and those of the respondent Samity, the learned Single Judge, in paragraphs 10, 11 and 12 of his judgment, observed as follows:

“10. On the fact of the evidence that was sought to be placed before this Court by the employer along with the affidavits filed by Mr. Agarwal opposing this application, it cannot be said that any of the 10 workmen are or were gainfully employed during the pendency of this Petition in any establishment and were/are in receipt of adequate

remuneration. Working as a petty labour is not employment in any establishment and at the same time it was not a regular job. Such employment is obviously as and when and wherever available. The submissions of Mrs. Doshi that the trial court be directed to record evidence as is done in the proceedings instituted under Section 33C(2) of the I.D. Act cannot be considered as the scheme of Section 17B does not envisage such an exercise. Mrs. Doshi also pointed out by referring to some correspondence between the management and the Government of India to the effect that if these 10 to 12 workmen are reinstated, the financial burden will have to be borne by the management alone and the Central Government would not contribute anything towards the same. The management is running a Hospital, a College and Yoga Research Centre etc. These 10 workmen were employed by the management Trust and they were not the employees of the college, Hospital or Yoga Centre as a separate establishment.

11. In the premises it is clear that the employer failed to defeat this application in spite of series of affidavits and the CD having been placed before this Court.

12. The application, therefore, succeeds and the same is hereby allowed in respect of the above 10 workmen.”

6. From the above, it will be evident that the learned Single Judge decided the question of gainful employment by the workmen on its merits and decided that it could not be said that any of the ten workmen were gainfully employed during the pendency of the petition, in any establishment and were in receipt of adequate remuneration.

7. Challenging the said order of the learned Single Judge, the respondent Samity filed Letters Patent Appeal No.200/2006 wherein, considering the the financial situation of the Samity, the Division Bench observed that the interest of justice would be served if a direction was given to the Samity to pay 70&percent; of the last drawn wages to the said ten workmen. An order was passed disposing of the Letters Patent Appeal in the said terms. The said order passed in the Letters Patent Appeal is the subject matter of the present appeal.

8. On behalf of the appellant Association, it has been submitted by Mr. Nitin S. Tambwekar, learned Advocate, that the Division Bench of the Bombay High Court had misconstrued the provisions of Section 17B of the *Industrial Disputes Act, 1947*, which makes it very clear that in the event an award for reinstatement is stayed by a High Court or the Supreme Court, the employer would be liable to pay such workman, during the period of pendency of such proceedings, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule, provided that the workman had not been employed in any establishment during such period and an affidavit by such workman has been filed to that effect in such court.

9. Learned counsel reiterated the findings of the learned Single Judge that the workmen concerned had not been gainfully employed during the period in question.

10. Mr. Tambwekar, accordingly, submitted that the order of the Division Bench of the High Court was liable to be set aside and that of the learned Single Judge restored.

11. Appearing for the respondent Samity, Ms. Ranjeeta Rohatagi, learned Advocate, submitted that no interference is called for with the impugned order since the Division Bench had considered the financial condition of the respondent Samity while passing the said order. She also urged that before the learned Single Judge, it had been submitted on behalf of the Samity that in order to quantify the workmen's dues, the matter should be remitted to the Labour Court for the purpose of taking evidence as is done under Section 33C(2) of the Act. However, such submission was also rejected by the learned Single Judge and was not considered by the Division Bench, while passing the impugned order.

12. We have considered the submissions made on behalf of the respective parties. Since interpretation of Section 17B of the *Industrial Disputes Act, 1947*, is central to the disposal of this appeal, the provisions thereof are extracted below:

“17B. 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 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.”

13. The provisions of Section 17B stipulates that when an Award of reinstatement of a workman is challenged by the employer before the High Court or the Supreme Court and the operation of the same is stayed, the employer shall be liable to pay the workman, during the period of pendency of such proceedings, full wages last drawn by him. It also indicates that the same would be subject to the workman filing an affidavit to satisfy the Court that he had not been gainfully employed during the said period. The said question has been set at rest by the learned Single Judge in favour of the workmen.

14. The invocation of Section 33C(2) of the aforesaid Act is also, in our view, misconceived, having regard to the fact that Section 33C(2) stands on a different footing from Section 17B. While under Section 17B it is under the orders of the High Court or the Supreme Court in a pending proceeding that the full wages last drawn by the workman, inclusive of any maintenance allowance admissible to him under any rule, is to be paid, Section 33C(2), on the other hand, provides for recovery of money due from the employer or any benefit which

is capable of being computed in terms of money. The question of invocation of Section 33C(2) arises only when there is a dispute as to the quantum of the dues. The two aforesaid provisions contemplate two different situations and in certain cases the provisions of Section 33C(2) may have to be resorted to in respect of an order under Section 17B, but not as a matter of course. The necessary details required for giving effect to an order under Section 17B of the 1947 Act are available both with the employer as also the employee and only involves a matter of calculation for which no evidence is required to be taken.

15. For better appreciation of the matter, the provisions of Section 33C(2) are reproduced hereinbelow:

“33C Recovery of money due from an employer- (1) xxx xxx xxx (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that where the presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.”

16. Sub-sections (3), (4) and (5) of Section 32 of the Act define the procedure to be followed for recovery of the dues as computed.

17. In contrast, Section 17B provides in unambiguous terms that if an award for reinstatement of a workman is stayed at the instance of the employer, either by the High Court or the Supreme Court, the employer will be liable to pay to the workman during the pendency of the proceedings before the High Court or the Supreme Court full wages as last drawn by him, including any maintenance allowance admissible to him under any Rule, if the workman had not been gainfully employed elsewhere during the said period.

18. On the other hand, Section 33C(2) of the aforesaid Act contemplates a proceeding requiring evidence to be taken to determine the quantum of the dues payable to the workman. Taking recourse to such a course of action as a matter of course would destroy and frustrate the very purpose of Section 17B which, as has been consistently held by this Court, is to provide the workman with the means of sustenance of his family members and himself during the pendency of the proceedings taken by the employer before the High Court or the Supreme Court.

19. Apart from the above, while disposing of the letters patent appeal, the Division Bench of the High Court has not also come to a finding which is different from the finding arrived at by the learned Single Judge in this regard.

20. During the course of the hearing of this appeal, Ms.Rohatagi brought to our notice an order dated 6th August, 2007 and subsequent amendments made therein by orders dated 31st October, 2007 and 5th March, 2008 passed in Letters Patent Appeal No.138/2007, which had been filed against the final disposal of the writ petition. It has been submitted by her that since the learned counsel of the appellant Association, representing the workmen, had agreed that they would be entitled to get the benefits of the interim order passed by the Division Bench, the present appeal had been rendered infructuous.

21. We are unable to find any merit in the said submission, having regard to the observations made herein-above regarding the effect of Section 17B of the Industrial Disputes Act regarding payment of full wages to a workman as last drawn by him during the pendency of the proceedings either before the High Court or before this Court in which the award of reinstatement is stayed.

22. We, accordingly, allow the appeal, set aside the order passed by the Division Bench of the Bombay High Court and restore that of the learned Single Judge dated 31st August, 2006. However, we also request the Bombay High Court to try and dispose of the pending appeal as early as possible.