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LAWS(GJH) 2015 10 182

HIGH COURT OF GUJARAT

Coram :- JAYANT PATEL, N. V. ANJARIA, JJ.

Decided on 2015 October 16

Letters Patent Appeal No. 1282 of 2015 in Special Civil Application No. 6930 of 2015.

BHARAT TEXTILE WORKS

VERSUS

Bhikhabhai Gandabhai Patel And Anr.

Advocates:

PRATIK P. THAKKAR

[-] Referred Acts:

[CONSTITUTION OF INDIA , Art. 226](#)

[INDUSTRIAL DISPUTES ACT, 1947 , S. 17B , S. 33C\(2\)](#)

Citations:

CLR 2016 1 639, LAWS(GJH) 2015 10 182,

Expert View:

- A. **The contention raised on behalf of the appellant was that when this Court decided the application under section 17B of the Industrial Disputes Act (hereinafter referred to as the "Act") on 21__ . 03__ . 2012 in Civil Application No__ . 177/12, the wages under section 17B of the Act was not specifically ordered since the workman was already reinstated, but the Court had observed that for other ancillary benefits, the workman may approach before the appropriate forum__ . Merely because on account of the reinstatement no further order was passed by the Court, the right of the workman to get wages under section 17B of the Act would not go away, more particularly when this Court had stayed the award on the condition to comply with the provisions of section 17B of the Act and the appellant had taken the benefit of the interim relief granted by this Court__ . __**
- B. **Hence, the appeal is meritless and therefore, dismissed__ The learned Single Judge did not consider the said aspect and therefore, this Court may consider in the present appeal__ Hence, the appeal is meritless and therefore, dismissed__**
- C. **Merely because on account of the reinstatement no further order**

was passed by the Court, the right of the workman to get wages under section 17B of the Act would not go away, more particularly when this Court had stayed the award on the condition to comply with the provisions of section 17B of the Act and the appellant had taken the benefit of the interim relief granted by this Court. -- Under the circumstances, the learned Single Judge has rightly found that no case was made out for interference.

JUDGMENT / ORDER

1. The present appeal is directed against the order dated 11.09.2015 passed by the learned Single Judge of this Court in Special Civil Application No.6930/15, whereby the learned Single Judge for the reasons recorded in the order, has not interfered with the order passed by the Labour Court below recovery application.

2. We have heard Mr. Thakkar, learned counsel appearing for the appellant.

3. The contention raised on behalf of the appellant was that when this Court decided the application under section 17B of the Industrial Disputes Act (hereinafter referred to as the "Act") on 21.03.2012 in Civil Application No.177/12, the wages under section 17B of the Act was not specifically ordered since the workman was already reinstated, but the Court had observed that for other ancillary benefits, the workman may approach before the appropriate forum. In the submission of Mr. Thakkar, as the wages under section 17B of the Act was not specifically awarded nor any liberty was reserved for claiming wages, the minimum wages could not have been ordered by the Labour Court in the recovery application under section 33C(2) of the Act. The learned Single Judge did not consider the said aspect and therefore, this Court may consider in the present appeal.

4. It is an undisputed position that after the award for reinstatement was passed by the Labour Court with 40% back wages on 30.03.2010, the petition was preferred before this Court being SCA No. 14039/10. In the said petition, on 27.12.2010, the order came to be passed, whereby the interim stay against the implementation of the award was granted on the condition that section 17B of the Act is complied with. Thereafter, the said situation continued and on 05.03.2012, the reinstatement has been made. Since the reinstatement was made, the Court disposed of the Civil Application No.177/12 and observed that for ancillary benefits, the workman may approach before the appropriate forum. Merely because on account of the reinstatement no further order was passed by the Court, the right of the workman to get wages under section 17B of the Act would not go away, more particularly when this Court had stayed the award on the condition to comply with the provisions of section 17B of the Act and the appellant had taken the benefit of the interim relief granted by this Court. Once the last wages drawn were payable as per section 17B of the Act pursuant to the interim order passed by this Court and the Labour Court has ordered payment of the minimum wages prevailing then, it cannot be said that such relief was unavailable to the workman as sought to be canvassed. In any case, prior to 05.03.2012, the workman was entitled for wages under section 17B of the Act, which has been ordered by the Labour Court.

5. Under the circumstances, the learned Single Judge has rightly found that no case was made out for interference. We also find that the view taken by the learned Single Judge calls for no interference. Hence, the appeal is meritless and therefore, dismissed. Letters Patent Appeal Dismissed.

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