



2024 : DHC : 3655-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 06.05.2024

+ LPA 248/2024 & CM APPL. 18545/2024 -Delay 127 days.

PREM SINGH

..... Appellant

Through: Ms.Saahila Lamba & Mr.Tanmay
Cheema, Advs. along with the appellant in person.

versus

STATE BANK OF TRAVANCORE

..... Respondent

Through: Mr.Buddy A Ranganadhan, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present appeal under Clause X of the Letters Patent seeks to assail the order dated 10.04.2019 passed by the learned Single Judge in W.P.(C)11160/2004 insofar as it directs that in lieu of reinstatement, the appellant be paid lumpsum compensation of Rs.1,00,000/-. The appellant also assails the order dated 18.10.2023 passed in Review Petition No.247/2019 vide which the review petition preferred by him was dismissed by the learned Single Judge.

2. Vide the impugned order dated 10.04.2019, the learned Single Judge has allowed the respondent's challenge to the Industrial Tribunal's award dated 19.04.2004 by holding that it was a case of loss of confidence by the employer/respondent and, therefore, the appellant was only entitled to



compensation as against reinstatement with 50% back wages directed under the award. While awarding compensation, the learned Single Judge has observed that since a sum of about Rs.3,00,000/- had already been paid to the appellant towards the amount payable under Section 17B of the Industrial Disputes Act, 1947 (the Act), he be paid only a further sum of Rs.1,00,000/- towards lumpsum compensation.

3. In light of the observations made in the impugned order that the appellant had given his consent for receiving compensation in lieu of reinstatement, learned Counsel for the appellant fairly does not seek reinstatement for the appellant. Her grievance, however, is that the learned Single Judge has erred in awarding a meagre compensation of Rs.1,00,000/- by taking into account the sum of Rs.3,00,000/- paid to the appellant under the provisions of Section 17B of the Act. Her plea thus being that as a result of this direction, the amount received by the appellant towards Section 17B of the Act is being virtually adjusted from the lumpsum compensation which he is entitled to receive; consequently, the appellant has been directed to be paid compensation of Rs.1,00,000/-, which she submits is highly inadequate.

4. On 09.04.2024, this Court after considering the submissions of learned counsel for the parties, had granted time to the learned counsel for the respondent to obtain instructions as to whether the respondent would be agreeable for modification of the impugned order by agreeing that the amount paid to the appellant under Section 17B of the Act would not be taken into account for computing lumpsum compensation payable to him and thereby, agreeing to pay a lumpsum compensation of Rs.4,00,000/- to



him as against the sum of Rs.1,00,000/- directed under the impugned order.

5. On 24.04.2024, hearing was deferred at the request of learned counsel for the respondent who had prayed for further time to obtain instructions. However, even today, no instructions to the learned counsel for the respondent are forthcoming. In these circumstances, we have no other option but to proceed with the appeal on merits.

6. As noted hereinabove, the only grievance of the appellant is that even if the learned Single Judge was of the view that it was not a fit case for granting reinstatement with 50% back wages and the relief payable to the appellant was required to be modified to lump sum compensation, the learned Single Judge could not have directed that the payment made to the appellant under Section 17B of the Act, be taken into consideration while granting him compensation. It is, therefore, urged by the learned counsel for the appellant that on account of this erroneous finding of the learned Single Judge that the amount paid under Section 17B of the Act was required to be treated as compensation, the appellant will in fact, receive only a lumpsum compensation of Rs.1,00,000/-, which amount, it is stated, is highly inadequate. By placing reliance of the decision of the Apex Court in ***Dena Bank v. Kiritikumar T. Patel, (1999) 2 SCC 106***, it has been prayed that the compensation amount ought to be suitably enhanced by Rs.3,00,000/- by disregarding the payment made to the appellant under Section 17B of the Act.

7. On the other hand, learned counsel for the respondent supports the impugned order and submits that the learned Single after taking into account



all facts and circumstances of the case, has come to a conclusion that lumpsum compensation of Rs.1,00,000/- to the appellant would be adequate. He, therefore, prays that this Court ought not to interfere with this exercise of discretion by the learned Single Judge. He is, however, not in a position to deny that as per the decision of the Apex Court in *Dena Bank (supra)*, the payments made to the workmen under Section 17B of the Act are in the nature of subsistence allowance and are neither refundable nor recoverable even if the award directing reinstatement is set aside by the High Court.

8. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting the nature of payment made under Section 17B of the Act as emerging from the decision of the Apex Court in *Dena Bank (supra)*. The relevant extracts of the said decision read as under:-

“21. As indicated earlier Section 17-B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the award of a Labour Court or the Industrial Tribunal during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court. The object underlying the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or this Court. Since the payment is of such a character, Parliament thought it proper to limit it to the extent of the wages which were



*drawn by the workman when he was in service and when his services were terminated and therefore used the words “full wages last drawn”. To read these words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his services had not passed since it has been set aside by the award of the Labour Court or the Industrial Tribunal, would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is under challenge. Since the amount is not refundable or recoverable in the event of the award being set aside, it would result in the employer being required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. We are unable to construe the provisions contained in Section 17-B to cast such a burden on the employer. In our opinion, therefore, the words “full wages last drawn” must be given their plain and material meaning and they cannot be given the extended meaning as given by the Karnataka High Court in **Visveswaraya Iron & Steel Ltd. [(1994) 84 FJR 46 : (1994) 1 LLJ 555 (Kant)]** or the Bombay High Court in **Carona Sahu Co. Ltd. [(1995) 70 FLR 25 : (1994) 2 LLN 834 (Bom)]**”*

9. In the light of the aforesaid, it is clear that payments made to workmen under Section 17B of the Act, are not refundable and cannot be directed to be refunded even if the management succeeds in its challenge to the award. Once the amount paid under Section 17B of the Act is neither refundable nor recoverable, we fail to appreciate as to how the said amount can be taken into account for computing compensation payable to a workman in lieu of reinstatement. In the present case, the appellant had succeeded before the learned Labour Court which found that his termination



from service was illegal and, therefore, directed that he be reinstated with 50% back wages. Merely because during the pendency of the writ petition filed by the respondent/management, he had received amounts under Section 17B of the Act, would not, in our view, be a ground hold against him and reduce the compensation which is payable to him in lieu of reinstatement.

10. The Industrial Disputes Act, 1947, is a social welfare legislation and the provisions of Section 17B were incorporated in the Act with a view to provide some succour to the workman during the pendency of the management's challenge to the industrial award. It is due to this reason that this amount unlike other payments made to the parties during the pendency of the proceedings before the Court, has been held to be non-refundable and non-recoverable by the Apex Court in *Dena Bank (supra)*. The nature of beneficial payments under Section 17B of the Act appears to have been overlooked by the learned Single Judge.

11. We are, therefore, of the view that the learned Single Judge has erred in taking into account the amount of Rs.3,00,000/- paid to the appellant towards Section 17B of the Act and therefore directing that a further sum of Rs.1,00,000/- be paid to him as compensation in lieu of reinstatement. We, therefore, allow the appeal by modifying the impugned order dated 10.04.2019 and directing that in addition to the sum of Rs.1,00,000/- directed to be paid as compensation under the impugned order, a further sum of Rs.3,00,000/- be paid to the appellant towards lumpsum compensation. The said payment be made within a period of four weeks. The appeal along with pending



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application stands disposed of in the aforesaid terms.

12. Learned counsel for the appellant, on instructions from the appellant who is present in Court, submits that after receipt of the further sum of Rs.3,00,000/- from the respondent in terms of this order, the appellant will have no surviving claim against the respondent.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 6, 2024

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