

Karnataka High Court M/S Visveswaraya Iron And Steel ... vs M. Chandrappa And Another on 12 March, 1993 Equivalent citations: 1993 (1) KarLJ 633, (1993) ILLJ 198 Kant, (1994) ILLJ 555 Kant Author: K Swami Bench: K Swami, A Sadashiva ORDER K.A. Swami, Actg. C.J. 1. This appeal is preferred against the Order dated February 1, 1993 passed by the learned single Judge in Writ Petition No. 3486 of 1993 (L). In the writ petition, the appellant has challenged the Award dated August 17, 1992 passed by the Presiding Officer, Labour Court, Mangalore, in Reference No. ID (LCM) 10 of 1988. The Labour Court has set aside the Order, dated May 31, 1985 passed by the appellant terminating the services of respondent No. 1 and directed reinstatement of respondent No. 1 with all back wages along with consequential benefits and the costs of the proceeding. By the order under appeal, the learned single Judge has stayed the operation of the Award subject to the condition that respondent No. 1 is reinstated and paid current wages. 2. Sri S. G. Sundaraswamy, the learned Senior Counsel appearing for the appellant, submits that this is not a case in which respondent No. 1 should be ordered to be reinstated pending decision as to the validity and correctness of the award, because of the fact that in the past he had remained absent for several days in each year starting from 1977 to 1985 and this will have a very deleterious effect on the other workmen if, pending the decision of this court, the Award is given effect to by reinstating respondent No. 1. It is also further submitted that whenever an award in which reinstatement has been ordered is challenged, the interim order, if any, has to be passed in terms of Section 17B of the Industrial disputes Act, 1947; that Section 17B does not direct reinstatement and that it only directs payment of full wages last drawn by the workman inclusive of any maintenance allowance admissible to him. 3. The question for consideration is, in the event the operation of the Award which directs reinstatement and full payment of back wages is stayed, what are the wages that should be ordered to be paid to the workman during the pendency of the proceeding before this court. 4. Section 17B of the Act reads thus : "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 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 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." 5. The question as to whether this provision can be applied or not to the Awards passed prior to the coming into force of the same, (which came into force on August 21, 1984) came up for consideration before the Supreme Court in Bharat Singh v. Management of

New Delhi Tuberculosis Center, New Delhi and Others 1986-II-LLJ-219. The Supreme court, after referring to the Objects and Reasons for introducing such a provision, observed thus : "... This section has in effect only codified the rights of the workmen to get their wages which they could not get in time because of long drawn out process caused by the methods employed by the Management. This section, in other words, gives a mandate to the courts to award wages if the conditions in the Section are satisfied." 6. In the Objects and Reasons for introducing this provision, it was also specifically stated thus : "When Labour Court pass awards of reinstatement, these are often contested by an employer in the Supreme Court and High Courts. It was felt that the delay in the implementation of the award causes hardship to the workman concerned. It was, therefore, proposed to provide the payment of wages last drawn by the workman concerned, under certain conditions, from the date of the Award till the case is finally decided in the supreme Court or High Courts." 7. Though in Section 17B of the Act the words "from the date of the Award" are not found, having regard to the objects and reasons stated for inserting this provision, we can, without any difficulty, come to the conclusion that the date from which the full wages last drawn to be paid should be from the date of the Award till disposal of the proceedings. 8. The next question for consideration is, what is the meaning of the words "full wages last drawn" referred to in the section. 9. Sri S. Krishnaiah, the learned counsel appearing for respondent No. 1 has brought to our notice a Division Bench decision of the High Court of Delhi in M/s. Fouress Engineering (I) Pvt. Ltd. v. Delhi Administration and Others, 1992-I-LLJ-710. In that decision, the question regarding payment of full wages during the pendency of the proceedings came up for consideration. It was observed : "full wages means full wages during the course of employment, and not what was paid upon termination of the employment". The aforesaid decision also does not state what should be the content of "full wages last drawn" to be paid from the date of the Award till the disposal of the proceedings. 10. we are of the view that we have to take into consideration the pendency of the proceeding before the Labour Court which is usually long, in order to decide as to what should be the content of "full wages last drawn" by the workmen to be ordered to be paid from the date of the Award. It is possible and it is not uncommon that the proceedings before the Labour Court linger on for years. In some cases it takes a decade. If after a decade the full wages last drawn are to be paid from the date of the Award during the pendency of the proceedings before the court at the same rate at which the wages were last drawn by the workman when he was removed, dismissed or terminated from the service, it would cause him great prejudice and injustice and results in harassment of the workman. During the last period of 10 years there would be escalations in the cost of living and there would also be increase in the wages paid to the workmen doing the work of similar nature. It would be highly unjust even after passing of the Award, which directs the reinstatement, to direct the management to pay only that much of the sum which was paid when the services of the workman were terminated about a decade ago. The Objects and Reasons with which this provision is inserted, the words "full wages last drawn" used in the section, the

time occupied for passing the Award by the Labour Court or the Industrial Tribunal as the case may be, the escalation in the cost of living during this period and the increase in the wages have to be taken into consideration in determining the content of “full wages last drawn” by the workman, because the object of the provision is to ensure that the workman gets the wages which he would have got had he been continues in service. If the management wants to have the pleasure of not reinstating the workman according to the Award, it must prepared to pay the full wages last drawn worked out till the date of the Award which increments and D.As., as admissible to the workman, if the award has to be stayed during the pendency of the proceeding before this Court. 11. Sri. Krinshnaih, learned counsel appearing for the first respondent, strenuously contended that the decision in Karnataka State Forest Industries Corporation Ltd. v. The Labour Court and Another, Writ Appeal No. 150 of 1993, decided on February 8, 1993 governs the case; therefore, there is no question of interfering with the interim order passed by the learned single Judge staying the Award subject to the reinstatement on payment of current wages. In that decision, all that has been stated is that : “2. The learned single Judge, pending disposal of the writ petition has stayed the operation of the said order subject to reinstatement of respondent 3 and paying current wages. However, the learned counsel tried to argue on the merits of the case. It is not possible to appreciate those contentions in the appeal preferred against the interlocutory order. Therefore, we do not propose to deal with anyone of such contentions as the interim order only directs reinstatement of the 3rd respondent and payment of current wages. Subject to this the Award has been stayed. As a result thereof the appellant is not bound to pay the back-wages upto the date of reinstatement, which will be decided in the writ petition. Hence, we do not see any grounds to interfere. The appeal is rejected. All the contentions having a bearing on the merits of the case are left open.” Therefore, it is clear from the aforesaid decision that Section 17B of the Act, was not pressed into service and it was not all contended that in terms of Section 17B of the Act, if an Award is stayed, the court has to adhere to the provisions contained therein and to order only full wages last drawn. That was a case in which the learned single Judge stayed the operation of the Award subject to reinstatement on paying current wages. It was not contended in that case that in terms of Section 17B, the order should have been passed. Therefore, we are of the view that, that decision cannot be held to govern the issue raised in this appeal. 12. It is also contended by Shri Krishnaiah that the words, “full wages last drawn” should be interpreted so as to include not only the yearly increment and the D.A. but also the revision of pay, if any, effected during the pendency of the proceeding before the Labour Court and the amount payable per month should be determined accordingly. We are of the view that this contention cannot be accepted because if the revision of pay has to be taken into consideration, then the meaning that should be given to the words “full wages last drawn” would become different and it would become current wages which is quite different and cannot be equated with that of the “full wages last drawn”. Hence, we are of the view that the content of the words “full wages last drawn” would take into their fold the wages drawn on the date of termination of the

services plus the yearly increment and the D.A. to be worked out till the date of the Award and that sum has to be paid to the workman during the pendency of the proceeding before this Court. We would like to make it clear that the wages that would be worked out upto the date of the Award shall have to be paid during the pendency of the proceedings before this Court in the event the award is stayed without reference to revision of wages, if any, during the pendency of proceedings before this Court. 13. Lastly, it is urged that even if it is held that the “full wages last drawn” would mean the wages last drawn on the date of removal of the workman plus increment and Dearness Allowance, but the Dearness Allowance will have to be paid as defined in Section 2(rr) of the Act; that the Dearness Allowance will have to be paid at the rate as the workman is for the time being entitled to. It is also further submitted that Dearness Allowance is connected with the cost of living; therefore, it cannot be held to be static, as such, the Dearness Allowance as permissible to the pay-scale of the post for the time being shall have to be taken into consideration and not on the basis of the old pay-scale. We are of the view that in the light of the definition of word “wages” as contained in Section 2(rr) of the Act, the Dearness Allowance which the workman is entitled to for the time being will have to be ordered to be paid. Thus, if the management wants to have the award, which directs reinstatement stayed during the pendency of the proceeding before this Court, it is liable to pay the full wages last drawn, meaning thereby the wages according to the pay-scale that was prevailing on the date of removal of the workman, with the increments upto the date of Award, and the Dearness Allowance as permissible to the pay-scale attached to the post for the time being on the date of the Award. It is not in dispute that the basic pay of the first respondent as on August 17, 1992 according to the old pay-scale would be Rs. 686/- which is inclusive of the increments admissible to the pay-scale attached to the post at the time of removal of the first respondent from service. The Dearness Allowance worked out on the basis of the Dearness Allowance payable for the time being to the workman in question would be Rs. 752.95 p. because the pay-scale that has been revised to the post in question as on the date of the Award is Rs. 1380-1541-27-1730 and the basic pay would come to Rs. 1595/- as on the date of the Award. The Dearness Allowance permissible for the time being would be Rs. 752.95 p. Therefore, the total amount payable to the first respondent would be Rs. 1438-95 p. (Rs. 686 + D.A. 752-95 p.) as on the date of the Award. 14. For the reasons stated above, the appeal is allowed in part. The Order passed by the learned single Judge is modified in the following terms : The Award, dated August 17, 1992 passed by the Presiding Officer, Labour Court, Mangalore, in Reference No. ID (LCM) 10/88 is stayed subject to the condition that the appellate pays Rs. 1438-95 p. per month to the first respondent from the date of the Award till the date of final disposal of the writ petition. It is also made clear that the amount fixed by us is intended to be operative during the pendency of the writ petition, as much, this order only governs the period from the date of the Award till the date of final disposal of the writ petition. The wages payable to the respondent shall have to be determined afresh in accordance with law and in the light of observations made in

the final order that may be passed in the writ petition. The arrears of pay and Dearness Allowance payable to the first responde from the date of the Award till the end of March, 1993 shall be paid on or before April 15, 1993 and thereafter, it shall be paid every month as usual. 15. Sri S. R. Nayak, learned Government Advocate, is permitted to file his memo of appearance for respondent 2 in six weeks.