

Dena Bank vs Kiritikumar T.Patel on 19 November, 1997

Equivalent citations: AIR 1998 SUPREME COURT 511, 1999 (2) SCC 106, 1998 AIR SCW 98, 1998 LAB. I. C. 578, (1997) 3 CTC 110 (SC), 1997 (3) CTC 110, 1997 (7) SCALE 56, 1998 () LAB LR 1, (1997) 2 GUJ LH 946, (1998) 78 FACLR 45, (1998) 1 SERVLR 69, (1998) BANKJ 332, (1998) 1 LAB LN 375, (1998) 1 SCT 57, (1997) 4 SCJ 249, (1998) 36 BANKLJ 13, (1997) 9 SUPREME 428, (1998) 92 FJR 309, (1997) 7 SCALE 56, (1998) 1 ALL WC 768, 1999 SCC (L&S) 466, (1998) 1 CURLR 191, (1998) 1 LABLJ 1, (1998) 2 MAHLR 290, (1998) 1 BANKCLR 484

Author: S.C.Agrawal

Bench: S.C. Agrawal, V.N. Khare

PETITIONER:

DENA BANK

Vs.

RESPONDENT:

KIRITIKUMAR T.PATEL

DATE OF JUDGMENT: 19/11/1997

BENCH:

S.C. AGRAWAL, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

THE 19TH DAY OF NOVEMBER, 1997 Present:

Hon'ble Mr.Justice S.C.Agrawal Hon'ble Mr.Justice V.N.Khare P.P.Rao, Sr.Adv., Ramji Srinivasan, Shaju Francis, R.Sasiprabhu, Adv. with him for the appellant Jitendra Sharma, Sr.Adv., (A.C.), Ms.Gunwant Dara, Ms.Minakshi Vij, Adv. with

him for the Respondent Raj Kumar Gupta H.V.I.Sharma and A.N.Bardiyar, Advs. for Intervenor.

J U D G M E N T The following Judgment of the Court was delivered:

S.C.AGRAWAL, J.:

Special leave granted.

The question that falls for consideration in this appeal is whether the expression "full wages last drawn" in Section 17-B of the Industrial Disputes Act, 1947 [hereinafter referred to as as 'the Act'] means wages drawn by a workman at the time of termination of his employment or wages which he would have drawn on the date of the award.

The respondent was employed as Clerk-cum-Cashier with the appellant-Bank. After holding an inquiry into charges relating to misappropriation of funds of the Bank of the tune of Rs.5,000/- as contained in charge sheet dated June 18, 1983 he was dismissed by order dated July 1, 1986. The said dismissal of the respondent gave rise to an industrial dispute which was referred for adjudication to the Central Industrial Tribunal, [hereinafter referred to as 'the Tribunal']. The tribunal found that the charges were not established and held that the dismissal of the respondent was illegal. The Tribunal directed reinstatement of the respondent in service. The appellant-Bank has filed a writ petition under Article 227 of the Constitution in the Gujarat High Court challenging the said award of the Tribunal and the said writ petition is pending in the High Court. In the said writ petition the Division Bench of the High Court on September 11, 1991 passed an interim order staying the operation of the award on the condition that the appellant-Bank would comply with the provisions of Section 17-B of the Act and will pay to the respondent during pendency of the writ petition wages as per the said provisions subject to the respondent complying with its requirement meaning thereby that he will be paid wages last drawn or which would have been drawn if he was not suspended. An application was submitted by the respondent for modification of the said order seeking a direction for payment of wages as on the date of the award. The said application was, however, rejected by the Division Bench of the High Court by order dated October 22, 1991. Subsequently another application was filed by the respondent whereunder it was submitted that during pendency of the writ petition in the High Court settlements had been signed with regard to wage revision, etc., the last such settlement being dated 14, 1995 and that the said settlement had been implemented by the appellant-Bank in respect of employees already in employment. The respondent claimed that he was also entitled for revision in wage structure including Dearness Allowance and other perks and perquisites. On the said application the learned Single Judge on September 26, 1995 passed an order directing that the respondent shall be paid the wages as revised by the appellant-Bank including the increments, D.A., etc.

which are granted to all the employees pursuant to two settlements signed during the pendency of the writ petition between the banking industry and the All India Trade Unions which are known as the Fifth and the Sixth Bipartite Settlements and that arrears be paid to him from the date of the award accordingly. The Letters Patent Appeal filed by the appellant-Bank against the said order of the learned Single Judge was decided by a Division Bench of the High Court by the impugned judgment dated February 7, 1996 whereby the direction given by the learned Single Judge regarding wages payable to the respondent has been maintained but the direction regarding arrears has been modified and it has been directed that the appellant-Bank shall deposit all deposit of three years in the name of the respondent and that from January 1, 1996 onwards the respondent will be paid according to the order of the learned Single Judge and that the deposit will abide by the final result of the Special Civil Application but the interest accruing on the fixed deposit shall be paid to the respondent. Feeling aggrieved by the said judgment of the Division Bench of the High Court the appellant-Bank has filed this appeal.

Shri P.P.Rao, the learned senior counsel appearing for the appellant-Bank, has urged that under Section 17-B of the Act the respondent is only entitled to payment of wages last drawn on the date of the termination of his employment and that the High Court was in error in directing that he should be paid the wages as revised by the appellant-Bank including the increments, D.A., etc. which are granted to all the employees pursuant to two settlement between the banking Industry and the All India Trade Unions which are known as the Fifth and the Sixth Bipartite Settlements which were signed during the pendency of the writ petition in the High Court. It has been urged that the expression "full wages last drawn" only means the quantum of emoluments actually drawn by the workman at the time of the termination of his employment and would not mean the wages which the workman would be entitled in terms of the award whereby the order of dismissal has been set aside. In support of his aforesaid submission the learned counsel has placed reliance on the following decisions of the various High Court:

1. International Air Cargo Workers Union Vs. International Airports Authority of India, [1990] 1 LLJ 1192 (Mad.);
2. Daladdi Coop. Agriculture Service Society Ltd. vs. Gurcharan Singh & Anr., 1993 (5) SLR 719 (Punjab & Hary.);
3. Elpro International Ltd. vs. K..B.Joshi & Ors., 1987 Lab.I.C. 1468 at 1472-1473 (Bom);
4. The Kapurthala Central Cooperative Bank Ltd. vs. the Presiding Officer, Labour Court, Jalandhar, 185 (2) 88 Pun.L.R.74.

Shri Jitendra Sharma, the learned senior counsel, who was requested to assist the Court as amicus curiae since the respondent did not chose to appear in spite of notice, has submitted that the expression "full wages last drawn" does not connote the amount that was being paid to the workman at the time of termination of his employment but means the wages that would be payable to him at the time of order of reinstatement. In support of his aforesaid submission Shri Jitendra Sharma has referred to the Objects and Reasons underlying the enactment of Section 17-B and has urged that the said provisions have been enacted to give protection to a workman who having succeeded in obtaining an award from the Labour Court, Industrial Tribunal or National Tribunal setting aside the order of termination of his service and directing that he be reinstated, is not allowed to resume work because the employer has filed proceeding in the High Court or in this Court to challenge the said award. The learned counsel has urged that if the workman is to get only what he was getting at the time of termination of his service, whether as subsistence allowance or wages, he gets no benefit of the award in his favour and is put back to his position as a suspended or charge sheeted workman notwithstanding the fact that termination order has been set aside. Shri Jitendra Sharma has also emphasised that it takes years to get a matter decided that it could not be the intention of Parliament in enacting Section 17-B that workman should only be paid wages that he was drawing several years ago at the time of the termination of his service. In support of his submissions Shri Jitendra Sharma has placed reliance on the following decisions of the High Courts:

- i. Vishveswaraya Iron and Steel Ltd. vs. M. Chandrappa & Anr., 1994 (84) FJR (Kar);
- ii. Carona Sahu Co. Ltd vs. A.K.Munakhan & Ors., 1995 (70) FLR 25 (Bom);
- iii. Kirtiben B.Amin vs. Mafatlal Apparels, 1995 (2) GLR 804 (Guj.);
- iv. Macneil and Magor Ltd. vs. 1st Additional Labour Court and Anr., 1995 (1) Labour Law Notes 1014 (Mad); v. Fouress Eng. (India) Pvt. Ltd. vs. Delhi Administration & Ors., 1987 (1) LLJ 485 (Delhi); and vi. P.Channaiah vs. Dy.Ex.Eng. R.R.Dist. & Ors. 1996 (2) LLJ 240 (A.P.).

Shri Raj kumar Gupta, the learned counsel for the Intervenor, has also placed reliance on the decisions referred to above on which reliance was placed by Shri Jitendra Sharma and has emphasised the hardship that would be caused to the workman if the expression "full wages last drawn" is construed to mean wages that were being drawn by him at the time of termination of his employment because it would not take into account the rise in the cost of living during the period the matter was pending adjudication before the Tribunal and is under consideration before the High Court or this Court.

It would be convenient at this stage to set out the provisions contained in Section 17-B of the Act which reads as under:

Section 17-B. Payment of full wages to workman pending proceeding is 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 proceeding 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 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."

The objects and reasons for enacting the said provisions were as follows :

"When Labour Courts pass award of reinstatement, these are often contested by an employer in the Supreme Court or High Courts. It was felt that the delay in the implementation of the award cause hardship to the workman concerned.

It was, therefore, proposed to provide the payment of the 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."

It would thus appear that the object underlying the enacting of the provisions contained in Section 17-B is to give relief to the workman in whose favour an award of reinstatement has been passed by the Labour Court and the said award is under challenge in the High Court or this Court. The said relief has been given with a view to relieve the hardship that would be caused to a workman on account of delay in implementation of the award as a result of the pendency of the proceedings in the High Court or this Court. The question for consideration is: what is the extent to which such relief has been granted to a workman under this provision? The objects and reason do not indicate an answer to this question and its answer has to be found in the provisions of the enactment. Since the expression "full wages last drawn" in Section 17-B has been construed by the various High Courts in the decisions referred to above we would briefly refer to the same:

A Division Bench of the Karnataka High Court in *Vishveswaraya Iron and Steel Ltd. vs. M. Chandrappa & Anr.* [Supra] has held that the words "full wage last drawn" 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. In taking this view the learned Judge have pointed out that it is not uncommon that the proceedings before the Labour Court linger on for years and in some cases it takes a decade and that 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 will result in harassment of the workman and that 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 workman doing the work of similar nature.

The said decision was followed by learned Single Judge of the Gujarat High Court in *Kirtiben B. Amin vs. Mafatlal Apparels* [supra].

In *Carona Sahu Co. Ltd. vs. A.K.Munakhan & Ors* [supra], a Division Bench of the Bombay High Court, after referring to the decision of the Karnataka High Court *Vishveswaraya Iron and Steel Ltd.* [supra], has laid down that the expression "full wages last drawn" means the full wages which the workman was entitled to draw in pursuance of the award and the implementation of which is suspended during the pendency of the proceedings. The learned Judges have observed that though the work "drawn" connotes past tense, it is obvious that the proper construction of the section is that the workman is entitled to the full wages which the workman would have been entitled to draw but for the pendency of the proceedings in the High Court or this Court. According to the learned Judges every component of wages payable on the date of the award must be taken into consideration while determining what were the wages payable to the workman on the date of the award. It has been held that this interpretation of the expression "full wages last drawn" subserves of the object and intention of the Parliament in enacting Section 17-B of the Act.

In *Macneil and Magor Ltd. vs. 1st Additional Labour Court and Anr.* [supra], a learned Single Judge of the Madras High Court has followed the said decision of the Bombay High Court in *Carona Sahu Co. Ltd.* [supra]. Similarly in *P.Channaiah vs. Dy. Ex. Eng.* [supra] the Division Bench of the Andhra Pradesh High Court has followed the said decision of the Bombay High Court in *Carona Sahu Co. Ltd.* [supra].

The High Court of Punjab & Haryana in *Daladdi Cooperative Agriculture Service Society Ltd. vs. Gurcharan Singh & Anr.*, 1993 (5) SLR 719, has, however, taken a different view. The learned Judge have held that the provisions in Section 17-B imply that if the workman is not gainfully employed in any establishment he is entitled to the payment of wages at the same rate at which he was being paid immediately before the termination of his services.

According to the learned Judges the legislature while introducing Section 17-B intended that the workman who remains unemployed in spite of an award having been passed by the competent court or Tribunal, should be paid at least the wages at the rate last drawn by him so that he may be able to subsist. It has been held that the workman who has not been reinstated is entitled to payment of wages only at the rate last drawn by him and not at the same rate at which the wages are being paid to the

workmen who are actually working.

The decision of the Delhi High Court in *Fouress Eng. (India) Pvt. Ltd. vs. Delhi Administration & Ors.*, on which reliance has been placed by Shri Sharma, does not throw much light on the meaning of the expression "full wages last drawn".

The decision of the Bombay High Court in *Elpro International Ltd vs. K..B.Joshi & Ors.* [supra] and that of the Punjab & Haryana High Court in *Kapurthala Central Cooperative Bank Ltd. vs. The Presiding Officer, Labour Court, Jalandhar* [supra], on which reliance has been placed by Shri Rao do not deal with the meaning of the expression "full wages last drawn".

In *Elpro International Ltd. vs. K..B.Joshi*, the Division Bench of the Bombay High Court was dealing with the challenge to the validity of the provisions in Section 17-B on the ground that the same are vague and arbitrary inasmuch as no provision is made as to what would happen to the amount paid if ultimately the employer succeeds and the award is quashed and set aside and are therefore, violative of Article 14 of the Constitution. It was also urged that the said provisions encroach upon the powers of the High Court and this Court under Articles 226 and 136 of the Constitution. The High Court has rejected both the contention. It was held that the absence of a provision as to what would happen to the amount paid under Section 17-B if ultimately the employer succeeds in the litigation does not make the section either vague or arbitrary because what is to be paid under Section 17-B is in the nature of subsistence allowance that is payable under Section 10-A of the Industrial Employment [Standing Orders] Act, 1946 which is neither refundable nor recoverable irrespective of the result of the enquiry. As regards challenge on the ground of encroachment upon the powers of the High Court under Article 226 and this Court under Article 136 of the Constitution, the High Court was of the view that Section 17-B only guarantees to the workman the payment of wages by the employer during the pendency of the proceedings before the High Court or the Supreme Court and that too subject to the conditions laid down by the said section and the proviso, irrespective of the result of the proceedings and it also imposes an obligation upon the workman concerned to file an affidavit before the Court stating that he has not been employed in any establishment during the pendency of the proceedings and it also absolves the employer of his obligation to pay such wages if he is able to prove to the satisfaction of the Court that the workman had been otherwise and had been receiving adequate remuneration. The High Court has observed that Section 17-B nowhere lays down that in extreme cases it is demonstrated that award passed is either without jurisdiction or is otherwise a nullity or grossly erroneous or perverse, the High Court or the Supreme Court is deterred from exercising its powers under Articles 226 and 136 of the Constitution. On that view the High Court held that Section 17-B does not in any way encroach upon or override the powers of the High Court under Article 226 and this Court Article 136 of the Constitution.

Similarly in the *Kapurthala Central Cooperative Bank Ltd. vs. The Presiding Officer, Labour Court, Jalandhar* [supra] the High Court of Punjab & Haryana considered the validity of the challenge to the Section 17-B as violative of the provisions of Article 226 of the Constitution and negating the said challenge it was held that Section 17-B does not in any way interfere or restrict the same and that the section only guarantees the workers the payment of wages by the employer during the course of

proceeding in the High Court or the Supreme Court of Course subject to the safeguard provided for irrespective of the result of the proceedings.

In International Air Cargo Workers Union vs. International Airports Authority of India [supra] the Division Bench of the Madras High Court has expressly stated that they were not dealing with a case where a workman whose services have been terminated was ordered to be reinstated by an award of the Tribunal and that it was a case where the Tribunal had directed that management to absolve the workman. Without deciding whether Section 17-B would be attracted in such a case the High Court while applying the principles underlying the said section, directly by way of interim relief, payment at the rate the workmen were being paid by the contractor and in that context there are observations to the effect that even if Section 17-B would be attracted no directions could have been issued to pay wages more than the last wages drawn.

As per the decisions of the High Court referred to above the expression "full wages last drawn" in Section 17- B can mean as under:

(i) wages only at the rate last drawn and not the same rate at which the wages are being paid to the workman who are actually working. [Daladdi Cooperative Agriculture Service Society Ltd. vs. Gurcharan Singh]

(ii) Wages drawn on the date of termination of the services plus the yearly increment and the Dearness Allowance to be worked out till the date of the award.

[Vishveswaraya Iron and Steel Ltd. vs. M.Chandrappa & Anr. and Kirtiben B. Amin vs. Mafatlal Apparels]

(iii) Full wages which the workman was entitled to draw in pursuance of the award and the implementation of which is suspended during the pendency of the proceeding [Carona Sahu Co. Ltd. vs. A.K.Munakhan & Ors., Macneil and Magor Ltd. vs. 1st Additional Labour Court & Anr. and P.Channaiah vs. Dy.Eng.] The first construction give to the words "full wages last drawn" their plain and material meaning. The second as well as the third construction read something more than their plain and material meaning in this words. In substance these construction read the words "full wages last drawn" as "full wages which would have been drawn". Such an extended meaning to the words "full wages last drawn" does not find support in the language of Section 17-B. Nor can this extended meaning be based on the object underlying the enactment of Section 17-B. 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 a certain extent the hardship that is caused to the workman due to delay in the implementation 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 by the award of the Labour of 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 even 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 proceeding 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 awarded being set aside. We are unable to constitute 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 Visveswarya Iroon & Steel Ltd. [supra] or the Bombay High Court in Carona Sahu Co. Ltd. [supra].

Shri Jitendra Sharma has laid emphasis on the word "full" in the expression "full wages last drawn" and has submitted that the said word implies that the last drawn must be the was which the workman would have drawn under the award. We are unable to agree. In our opinion, the expression "full" only emphasis that all the emoluments which are included in "wages" as defined in clause [rr] of section 2 of the Act so as to include in "wages" as referred to in sub-clauses (i) to (iv) are required to be paid. In this context, it may also be mentioned that in Section 17-B Parliament has also used the words "inclusive of any maintenance allowance admissible to him under to him any rule". These words indicate that maintenance allowance that is admissible under any rule is required to be paid irrespective of the amount which was actually being paid as maintenance allowance to the workman. But with regard to wages Parliament has used the words "full wages last drawn"

indicating that the wages that were actually paid and not the amount that would be payable are required to be paid.

As regards the powers of the High Court and the Supreme Court under Article 226 and 136 of the Constitution it may be stated that Section 17-B, by conferring a right on the workman to be paid the amount of full wages last drawn of the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of the award being set aside, does not in any way preclude the High Court or the Supreme Court to pass a order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a direction would be dehors the provisions contained in Section 17-B and while giving the direction the Court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. [supr] that in exercise of the power under Article 226 and 136 of the Constitution an order can be passed denying the workman the benefit granted under Section 17-B. The conferment of such a right under Section 17-B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Article 226 and 136 of the Constitution.

In the present case by his order dated September 26, 1995 the learned Single Judge, while exercising the powers under Section 17-B, has directed payment of wages as revised, including the increments, D.A., etc. which are granted to all the employee pursuant to the Fifth and Sixth Bipartite Settlements. The said direction of the learned Single Judge, which has been upheld by the Division Bench of the High Court in the impugned judgment, cannot be upheld since it amounts to directing payment of wages which would have been drawn by the respondent if he had been reinstated and not the full wages last drawn by him.

For the reasons aforementioned, the appeal is allowed and the impugned judgment of the Division Bench of the High Court dated February 7, 1996 as well as the order dated September 26, 1995 passed by the learned Single judge are set aside, No order as to costs.