

D.N. KRISHNAPPA

A

v.

THE DEPUTY GENERAL MANAGER

(Civil Appeal No. 9008 of 2022)

DECEMBER 12, 2022

B

[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

Industrial Disputes Act, 1947 – s.33-C(2) – Recovery of money due from an employer – Award passed ordering reinstatement with back wages – Order stayed during pendency of proceedings – Denial of back wages from date of award – Not justified – Principle of merger – Non-applicability of – Appellant was dismissed from service by respondent-bank – Labour Court ordered reinstatement with 50% back wages vide order dtd.18.07.07 – Eventually, High Court confirmed the order of reinstatement but without any back wages vide order dtd. 12.07.13 – SLP dismissed, appellant was reinstated on 23.09.13 – Appellant again approached the Labour Court by filing application u/s.33-C(2) claiming back wages from the date of award i.e., 18.07.07 till actual reinstatement on 23.09.13, allowed – Order set aside by High Court – Plea of bank that as the operation of award dtd. 18.07.07 was stayed by the High Court and continued to be stayed till disposal of the writ appeals on 12.07.13, the appellant shall not be entitled to the wages from the award dtd. 18.07.07 – Also, as per the Bank, the award dtd. 18.07.2007 merged with the order dtd.12.07.13 therefore, the said order would be enforceable on the principle of merger – On appeal, held: Interim orders are always subject to the final decision – Merely because there was an interim order/stay of the order of reinstatement during the pendency of the proceedings, the appellant cannot be denied the back wages/wages when ultimately the order of reinstatement came be confirmed by the Court – Further, principle of merger will also not be applicable as the order of award of reinstatement was confirmed by the Division Bench which will rely back to the original order passed by the Labour Court – Appellant entitled to the full wages with all emoluments from the date of order of reinstatement i.e., 18.07.07 to the date of actual reinstatement i.e., 23.09.13, after adjusting the amount already paid under s.17B, ID Act.

C

D

E

F

G

H

- A *Industrial Disputes Act, 1947 – s.33-C(2) – Bombay Chemical Industries Vs. Deputy Labour Commissioner & Anr. if applicable – Held: In the said case it is held that an un-adjudicated claim cannot be the subject matter of proceedings u/s.33-C(2) and in the proceedings u/s.33-C(2), the Tribunal can only interpret the award or settlement on which the claim is based – In the present case, the claim of the appellant was adjudicated upon, thus High Court misapplied the said decision to the facts herein – Appellant approached the Industrial Tribunal by way of an application u/s.33-C(2) for implementation of award dtd. 18.07.07 – Therefore, so far as the order of reinstatement and the wages claimed on the order of reinstatement is concerned, the same were already adjudicated upon – Thus, the said decision shall not be applicable to the facts of the case on hand.*
- B
- C

Allowing the appeal, the Court

HELD: 1.1 The order of reinstatement vide award dated

- D **18.07.2007 has been confirmed up to the Division Bench of the High Court and even by this Court. What was modified by the High Court was the back wages from the date of termination till the date of award passed by the CGIT. It was the bank – employer who obtained the stay order against the order of reinstatement which ultimately came to be terminated on 12.07.2013 when the Division Bench of the High Court dismissed the writ appeals. It was the employer – bank who obtained the stay against reinstatement and ultimately order of reinstatement attained the finality. Why should the employee be made suffer, when the bank obtained the stay of reinstatement and when the order of reinstatement subsequently came to be confirmed and attained the finality? So far as the submissions on behalf of the bank that the interim order merged with final order dated 12.07.2013 and therefore, the appellant is not entitled to claim the back wages for the period between 18.07.2007 and 12.07.2013 is concerned, at the outset, it is required to be noted that the interim order is always subject to the final order that may be passed finally while terminating the proceedings. Interim orders are always subject to the final decision. Therefore, merely because there was an interim order/stay of the order of reinstatement during the pendency of the proceedings, the employee-appellant cannot be denied the back wages/wages when ultimately the order of**
- E
- F
- G
- H

reinstatement came be confirmed by the Court. Similarly, the submission on behalf of the bank applying the principle of merger has also no substance. In the present case as such the order of award of reinstatement has been confirmed by the Division Bench of the High Court. Therefore, the order of reinstatement will rely back to the original order passed by the Labour Court. Merely because the reinstatement order was under challenge and there was a stay of the order of reinstatement during the pendency of the proceedings before the High Court, it cannot be a ground to deny the wages to the employee when ultimately the order of reinstatement came to be confirmed and attained the finality. [Paras 7, 7.2][817-D-H; 818-A-E]

1.2 Now so far as the submissions on behalf of the bank that as during the pendency of the proceedings before the High Court and for the period during the stay of order of reinstatement, the appellant was paid the last drawn wages under Section 17B of the ID Act and therefore he is not entitled to any wages for the period during the stay is concerned, there is no substance. At the most, whatever is held to be entitled to pay the appellant – employee as wages from the order of award of reinstatement till actual reinstatement, whatever is paid under Section 17B of the ID Act, the same is to be deducted and/or adjusted. Now reliance placed upon the decision of this Court in the case of *Bombay Chemical Industries* considered by the High Court is concerned, as such the High Court has mis-applied the said decision to the facts of the case on hand. In the present case, the claim of the appellant was adjudicated upon. The appellant approached the Industrial Tribunal by way of an application under Section 33-C(2) of the ID Act for implementation of award dated 18.07.2007. Therefore, so far as the order of reinstatement and the wages claimed on the order of reinstatement is concerned, the same were already adjudicated upon. In the case of *Bombay Chemical Industries*, it is observed and held that un-adjudicated claim cannot be the subject matter of proceedings under Section 33-C(2) and in the proceedings under Section 33-C(2), the Tribunal can only interpret the award or settlement on which the claim is based. Under the circumstances, the said decision shall not be applicable to the facts of the case on hand. [Paras 7.3, 7.4][818-C-G]

A

B

C

D

E

F

G

H

- A **1.3** In view of the above and for the reasons stated, the impugned judgment and order passed by the Division Bench of the High Court allowing the writ petition preferred by the respondent – bank and quashing and setting aside the order passed by the CGIT under Section 33-C(2) of the ID Act directing the bank to pay the wages from 18.07.2007 to 23.09.2013 is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. It is held that the appellant shall be entitled to the full wages with all emoluments from the date of order of reinstatement i.e., 18.07.2007 to the date of actual reinstatement i.e., 23.09.2013, however, after adjusting/deducting the amount already paid under Section 17B of the ID Act. Present appeal is allowed accordingly to the aforesaid extent. [Para 8][818-H; 819-A-B]
- B
- C

Bombay Chemical Industries Vs. Deputy Labour Commissioner & Anr. (2022) 5 SCC 629 : 2022 (2) JT

- D **14 – held inapplicable.**

Namer Ali Choudhury & Ors. Vs. Central Inland Water Transport Corporation Ltd. and Anr. (1977) 4 SCC 575 : [1978] 2 SCR 205; M.L. Bose & Company Pvt. Ltd.

- E *Vs. Employees AIR 1961 SC 1198; Kunhayammed and Ors. Vs. State of Kerala and Anr. (2000) 6 SCC 359 : [2000] 1 Suppl. SCR 538 – referred to.*

Case Law Reference

- | | | |
|----------------------------------|--------------------|-----------------|
| [1978] 2 SCR 205 | referred to | Para 3.3 |
| F [2000] 1 Suppl. SCR 538 | referred to | Para 4.2 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9008 of 2022.

From the Judgment and Order dated 30.06.2022 of the High Court of Karnataka at Bengaluru in Writ Petition No. 7176 of 2021 (L-RES).

- G Shailesh Madiyal, Mahesh Thakur, Ajay Kanjiya, Ms. Vinayaka S. Pandit, Ms. Vipasha Singh, Ms. Shivani, Akshay Gupta, Advs. for the Appellant.

Rajesh Kumar Gautam, Anant Gautam, Nipun Sharma, Sachin Singh, Vidur Ahluwalia, Sumit Sharma, Advs. for the Respondent.

- H

The Judgment of the Court was delivered by

A

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with impugned judgment and order dated 30.06.2022 passed by the High Court of Karnatakaat Bengaluru in Writ Petition No. 7176/2021, by which, the High Court has allowed the said writ petition preferred by the respondent - bank and has set aside the order passed by the Central Government Industrial Tribunal – cum - Labour Court (hereinafter referred to as the CGIT/Labour Court) in an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act) awarding wages for the period from 18.07.2007 to 23.09.2013, the employee – workman has preferred the present appeal.

B

2. The facts leading to the present appeal in a nutshell are as under: -

2.1 That the appellant herein was working with the respondent - bank. In the departmental proceedings he was dismissed from service on 27.09.1996. The order of dismissal was challenged by the appellant before the CGIT under Section 10(2)(a) of the ID Act. By the award dated 18.07.2007, the CGIT set aside the order of dismissal and passed an order of his reinstatement with 50% back wages and withholding four annual increments with cumulative effect from the date of order of punishment. The said award was challenged before the High Court by the bank as well as the appellant herein. The learned Single Judge by judgment and order dated 18.04.2013 confirmed the order of reinstatement, however, reduced the back wages from 50% to 25%. In the appeal(s), the Division Bench of the High Court also confirmed the order of reinstatement passed by the CGIT, howeverheld that the appellant is not entitled to any back wages. The judgment and order dated 12.07.2013 was the subject matter of Special Leave Petition(s) before this Court. This Court dismissed the Special Leave Petition(s). Thus, the order of reinstatement in terms of award dated 18.07.2007 attained the finality. That thereafter, the appellant came to be reinstated on 23.09.2013.

C

2.2 That neither was he reinstated earlier in spite of award dated 18.07.2007 nor was he paid full wages from the date of award i.e.,18.07.2007, therefore, he again approached the CGIT by filing an application under Section 33-C(2) of the ID Act claiming back wages

D

E

F

G

H

- A from the date of award dated 18.07.2007 passed by the CGIT till his actual reinstatement. The CGIT allowed the said application and directed the bank – employer to pay the wages due from the date of award to the date of actual reinstatement. The bank preferred the present writ petition before the High Court. By the impugned judgment and order, the Division Bench of the High Court has set aside the order passed by the CGIT relying upon the decision of this Court in the case of **Bombay Chemical Industries Vs. Deputy Labour Commissioner & Anr.; (2022) 5 SCC 629**, and has observed and held that CGIT had no jurisdiction to decide the application under Section 33-C (2) of the ID Act. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, the employee – workman has preferred the present appeal.

- 3. Shri Shailesh Madiyal, learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in setting aside the order passed by the CGIT under Section 33-C(2) of the ID Act directing the bank to pay the wages from the date of order of reinstatement passed by the CGIT vide award dated 18.07.2007 to the date of actual reinstatement i.e., 23.09.2013.

- 3.1 It is vehemently submitted that the order of reinstatement had attained the finality and therefore, the appellant ought to have been reinstated and/or is entitled to all the benefits including the wages from the date of award dated 18.07.2007 till the date of actual reinstatement.

- 3.2 It is submitted that the High Court has misread and/or misapplied the decision of this Court in the case of **Bombay Chemical Industries** (*supra*). It is submitted that the ratio of the judgment in **Bombay Chemical Industries** (*supra*) is that an unadjudicated claim cannot be the subject matter of proceedings under Section 33-C (2), and the CGIT can only interpret the award or settlement on which the claim is based. It is submitted that in the present case what was sought was implementation of award dated 18.07.2007 as modified by the Division Bench of the High Court. It is submitted that therefore, the application claiming the wages and other benefits from the date of award of reinstatement passed by the CGIT on 18.07.2007 was maintainable.

- 3.3 Relying upon the decision of this Court in the case of **Namer Ali Choudhury & Ors. Vs. Central Inland Water Transport Corporation Ltd. and Anr.; (1977) 4 SCC 575** (para 4), it is submitted

that as observed and held by this Court once there is an award and question arises as to the amount of money due under the award, the same would be the subject matter of proceedings under Section 33-C (2) of the ID Act. A

3.4 It is submitted that if the impugned judgment and order, the High Court interfering with the order of CGIT is upheld and the submissions on behalf of the bank is accepted, in that case, the appellant – employee/workman has to suffer for no fault of him by denying the wages from the date of award of reinstatement passed by the CGIT/ Labour Court which as such had attained the finality. B

3.5 It is submitted that the submissions on behalf of the bank that because there were stay order(s) from time to time after the award was passed and because the award was the subject matter of challenge before various Courts upto 12.07.2013, the appellant was not required to be paid the wages from the date of award till the actual reinstatement on 23.09.2013 is concerned, it is submitted that as a matter of fact the award dated 18.07.2007 to the extent of directing the bank to reinstate the appellant had attained finality and the same has remained un-interfered with. It is submitted that mere pendency of proceedings does not dilute the requirement of reinstatement in terms of the award with all its consequences including payment of wages. C

3.6 Making the above submissions and relying upon the decision of this Court in case of **M.L. Bose & Company Pvt. Ltd. Vs. Employees; AIR 1961 SC 1198**, it is prayed to allow the present appeal. E

4. Present appeal is vehemently opposed by Shri Rajesh Kumar Gautam, learned counsel appearing on behalf of the respondent - bank. It is submitted that in the facts and circumstances of the case as such the High Court has not committed any error in quashing and setting aside the order passed by the CGIT under Section 33-C(2) of the ID Act granting wages from the date of award of reinstatement passed by the CGIT on 18.07.2007 to the date of actual reinstatement. It is submitted that as such the operation of award dated 18.07.2007 remained stayed by the High Court as the said interim order continued till disposal of the writ appeals on 12.07.2013. It is submitted that as per the settled position of law the interim order passed by the High Court always merges with the final order. It is submitted that thus as in the present case interim stay granted by the High Court on the operation of award dated F

G

H

- A 18.07.2007 continued till the disposal of the writ appeals on 12.07.2013, therefore, award dated 18.07.2007 as modified by the final order dated 12.07.2013 passed by the Division Bench of the High Court becomes final and enforceable only on 12.07.2013. It is submitted that therefore, the appellant shall not be entitled to claim back wages for the period from 18.07.2007 to 12.07.2013.
- B 4.1 It is further submitted by the learned counsel appearing on behalf of the bank that since award dated 18.07.2007 remained stayed by the High Court till 12.07.2013, therefore, in view of the provisions contained in Section 17B of the ID Act, the appellant was paid last drawn wages amounting to Rs. 3,18,782.36/- for the period during the period the award passed by the CGIT remained stayed. It is submitted that since the last drawn wages as provided under Section 17B of the ID Act have been paid during the period award passed by the CGIT remained stayed by the High Court, even for the said period also the appellant is not entitled to full back wages, as is being claimed by the appellant.
- C 4.2 It is further submitted by the learned counsel appearing on behalf of the bank that even on the principle of merger the appellant shall not be entitled to any back wages from the date of award i.e., 18.07.2007 till the judgment and order passed by the Division Bench of the High Court. It is submitted that applying the principle of merger, only the final judgment and order dated 12.07.2013 passed by the Division Bench of the High Court shall be executable and enforceable. Reliance is placed on the decision of this Court in the case of **Kunhayammed and Ors. Vs. State of Kerala and Anr.; (2000) 6 SCC 359**.
- D F 4.3 Making the above submissions and relying upon the above decision, it is prayed to dismiss the present appeal.
- E 5. We have heard learned counsel appearing on behalf of the respective parties at length.
- F G 5.1 The short question which is posed for consideration of this Court is whether the appellant shall be entitled to the full wages from the date of award of reinstatement i.e., 18.07.2007 passed by the CGIT to the actual date of reinstatement i.e., 23.09.2013?
- G H 6. It is the case on behalf of the bank that as the award dated 18.07.2007 of reinstatement passed by the CGIT was stayed by the High Court and continued to be stayed till 12.09.2013, the appellant shall

not be entitled to the wages from the date of award dated 18.07.2007. It is also the case on behalf of the respondent – bank that award dated 18.07.2007 ultimately merges with the judgment and order dated 12.07.2013 passed by the Division Bench of the High Court and therefore, the order passed by the Division Bench of the High Court would be enforceable on the principle of merger. It is also the case on behalf of the bank that during the pendency of the stay of the order of reinstatement dated 18.07.2007, the appellant was paid the last drawn wages under Section 17B of the ID Act, the appellant shall not be entitled to any further wages/back wages from the date of the award of reinstatement dated 18.07.2007 to the final judgment and order passed by the High Court dated 12.07.2013.

7. Having heard learned counsel appearing on behalf of the respective parties and considering the facts narrated hereinabove, it emerges that the order of reinstatement vide award dated 18.07.2007 has been confirmed up to the Division Bench of the High Court and even by this Court. What was modified by the High Court was the back wages from the date of termination till the date of award passed by the CGIT. It was the bank – employer who obtained the stay order against the order of reinstatement which ultimately came to be terminated on 12.07.2013 when the Division Bench of the High Court dismissed the writ appeals. As observed hereinabove, it was the employer – bank who obtained the stay against reinstatement and ultimately order of reinstatement attained the finality. Why should the employee be made suffer, when the bank obtained the stay of reinstatement and when the order of reinstatement subsequently came to be confirmed and attained the finality?

7.1 So far as the submissions on behalf of the bank that the interim order merged with final order dated 12.07.2013 and therefore, the appellant is not entitled to claim the back wages for the period between 18.07.2007 and 12.07.2013 is concerned, at the outset, it is required to be noted that the interim order is always subject to the final order that may be passed finally while terminating the proceedings. Interim orders are always subject to the final decision. Therefore, merely because there was an interim order/stay of the order of reinstatement during the pendency of the proceedings, the employee – appellant cannot be denied the back wages/wages when ultimately the order of reinstatement came be confirmed by the Court.

A

B

C

D

E

F

G

H

- A 7.2 Similarly, the submission on behalf of the bank applying the principle of merger has also no substance. In the present case as such the order of award of reinstatement has been confirmed by the Division Bench of the High Court. Therefore, the order of reinstatement will rely back to the original order passed by the Labour Court. Merely because the reinstatement order was under challenge and there was a stay of the order of reinstatement during the pendency of the proceedings before the High Court, it cannot be a ground to deny the wages to the employee when ultimately the order of reinstatement came to be confirmed and attained the finality.
- C 7.3 Now so far as the submissions on behalf of the bank that as during the pendency of the proceedings before the High Court and for the period during the stay of order of reinstatement, the appellant was paid the last drawn wages under Section 17B of the ID Act and therefore he is not entitled to any wages for the period during the stay is concerned, there is no substance. At the most, whatever is held to be entitled to pay the appellant – employee as wages from the order of award of reinstatement till actual reinstatement, whatever is paid under Section 17B of the ID Act, the same is to be deducted and/or adjusted.
- E 7.4 Now reliance placed upon the decision of this Court in the case of **Bombay Chemical Industries** (*supra*) considered by the High Court is concerned, as such the High Court has mis-applied the said decision to the facts of the case on hand. In the present case, the claim of the appellant was adjudicated upon. The appellant approached the Industrial Tribunal by way of an application under Section 33-C(2) of the ID Act for implementation of award dated 18.07.2007. Therefore, so far as the order of reinstatement and the wages claimed on the order of reinstatement is concerned, the same were already adjudicated upon. In the case of **Bombay Chemical Industries** (*supra*), it is observed and held that un-adjudicated claim cannot be the subject matter of proceedings under Section 33-C(2) and in the proceedings under Section 33-C(2), the Tribunal can only interpret the award or settlement on which the claim is based. Under the circumstances, the said decision shall not be applicable to the facts of the case on hand.
- H 8. In view of the above and for the reasons stated above, the impugned judgment and order passed by the Division Bench of the High Court allowing the writ petition preferred by the respondent – bank and quashing and setting aside the order passed by the CGIT under Section

33-C(2) of the ID Act directing the bank to pay the wages from 18.07.2007 to 23.09.2013 is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. It is held that the appellant shall be entitled to the full wages with all emoluments from the date of order of reinstatement i.e., 18.07.2007 to the date of actual reinstatement i.e., 23.09.2013, however, after adjusting/deducting the amount already paid under Section 17B of the ID Act. Present appeal is allowed accordingly to the aforesaid extent. No costs.

Divya Pandey
(Assisted by : Deepak Panwar, LCRA)

Appeal allowed.