

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 394 of 2001

in

SPECIAL CIVIL APPLICATION No 1392 of 2001

with

LETTERS PATENT APPEAL No 406 of 2001

in

SPECIAL CIVIL APPLICATION NO. 1394 of 2001

with

LETTERS PATENT APPEAL No. 407 of 2001

in

SPECIAL CIVIL APPLICATION NO. 1396 of 2001

with

LETTERS PATENT APPEAL No. 408 of 2001

in

SPECIAL CIVIL APPLICATION NO. 1397 of 2001

with

LETTERS PATENT APPEAL No. 409 of 2001

in

SPECIAL CIVIL APPLICATION NO. 1398 of 2001

with

LETTERS PATENT APPEAL NO. 410 of 2001

in

SPECIAL CIVIL APPLICATION NO. 1400 of 2001

with

LETTERS PATENT APPEAL NO. 411 of 2001

in

SPECIAL CIVIL APPLICATION NO. 1401 of 2001

with

LETTERS PATENT APPEAL NO. 412 of 2001

in

SPECIAL CIVIL APPLICATION NO. 1402 of 2001

with

LETTERS PATENT APPEAL NO. 413 of 2001

in

SPECIAL CIVIL APPLICATION NO. 1403 of 2001

with

LETTERS PATENT APPEAL NO. 414 of 2001

in

SPECIAL CIVIL APPLICATION NO. 1404 of 2001

with

LETTERS PATENT APPEAL NO. 415 of 2001

in

SPECIAL CIVIL APPLICATION NO. 1406 of 2001

with

LETTERS PATENT APPEAL NO. 416 of 2001
in
SPECIAL CIVIL APPLICATION NO. 1407 of 2001
with
LETTERS PATENT APPEAL NO. 417 of 2001
in
SPECIAL CIVIL APPLICATION NO. 1408 of 2001
with
LETTERS PATENT APPEAL NO. 418 of 2001
in
SPECIAL CIVIL APPLICATION NO. 1409 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE H.H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
 5. Whether it is to be circulated to the Civil Judge? No :

BABUBHAI C KACHHADIYA

Versus

RAJKOT MUNICIPAL CORPORATION

Appearance:

MR NR SHAHANI for Appellant
MR KV GADHIA for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE H.H.MEHTA

Date of decision: 29/06/2001

ORAL COMMON JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

All the above-numbered appeals are ordered to be admitted. At the joint request of the learned counsel for the parties, the appeals are taken-up for final disposal today.

By filing the above-numbered appeals, the appellant in each appeal has challenged common order dated February 26, 2001 passed by the learned Single Judge in Special Civil Application No.1392/2001 to 1409/2001, by which the petitions filed by the common employer against common award passed by the Labour Court, Rajkot directing the employer to reinstate the appellants in service with backwages, are admitted and interim relief in terms of Para 7(B) staying operation of the award is granted without requiring the respondent-Corporation to comply with the provisions of section 17B of the Industrial Disputes Act, 1947.

2. The appellants were employed by the respondent-Corporation on August 28, 1990. Their services were orally terminated on September 4, 1991. Therefore, they raised disputes regarding illegal termination of their services. On failure of conciliation proceedings, disputes were referred to Labour Court, Rajkot for adjudication, where they were numbered as Reference (LCR) Nos. 109/93 to 123/93 and 135/93 to 137/93. The Labour Court by common award dated August 23, 2000 has directed the respondent-Corporation to reinstate each appellant in service with backwages. Feeling aggrieved by the said award, the respondent-Corporation has preferred Special Civil Applications No.1392/2001 to 1409/2001. In the petitions, the respondent-Corporation by way of interim relief had prayed to stay operation and implementation of the award passed by the Labour Court. The learned Single Judge by order dated February 26, 2001 has issued rule in each petition and granted interim relief in terms of Para 7(B) of the petition without requiring the respondent-Corporation to make payment of wages as contemplated by section 17B of the Industrial Disputes Act, 1947 ("the I.D.Act" for short). Under the circumstances, the appellants have filed the above-numbered appeals and claimed that benefit of payment of wages pending petitions could not have been denied to them in view of provisions of section 17B of

the I.D.Act.

3. We have heard the learned counsel for the parties. While construing the provisions of section 17B of the I.D.Act, the Supreme Court in *Dena Bank v. Kiritkumar T.Patel*, AIR 1998 SC 511 has held as under :-

"Section 17-B, by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge to the award 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 an 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 S.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. In exercise of the power under Arts.226 and 136 of the Constitution an order cannot be passed denying the workman the benefit granted under S.17-B. The right of workman under S.17-B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Arts.226 and 136 of the Constitution.

1987 Lab IC 1468 (Bom), overruled."

The principle laid down by the Supreme Court in the above quoted decision makes it clear that in exercise of powers under Articles 226 and 136 of the Constitution, an order cannot be passed denying the workman the benefit granted under section 17-B of the I.D.Act and the right of the workman under section 17-B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 & 136 of the Constitution. In our view, the learned Single Judge was not justified in not requiring the respondent-Corporation to comply with the provisions of section 17-B of the I.D.Act. The stay of operation and implementation of the award impugned in the petitions could have been granted only on compliance of provisions of section 17-B of the I.D.Act. Therefore, the interim relief granted by the learned Single Judge vide order dated February 26, 2001 will have to be modified and it will have to be held that the interim relief will continue only on compliance of

the provisions of section 17-B of the I.D.Act by the respondent-Corporation.

For the foregoing reasons, all the appeals succeed. The interim order dated February 26,2001 passed by the learned Single Judge in Special Civil Applications No. 1392/2001 to 1409/2001 is modified and it is held that the impugned award of the Labour Court dated August 23, 2000 shall remain stayed subject to compliance of the provisions of section 17-B of the I.D.Act by the respondent-Corporation pending disposal of the petitions. The respondent-corporation shall comply with the provisions of section 17-B of the I.D.Act as early as possible and without any avoidable delay. The appeals are accordingly allowed with no orders as to costs.

(J.M.Panchal,J.)

(H.H.Mehta, J.)

(patel)