

RAJESHWAR MAHTO

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v.

ALOK KUMAR GUPTA, G.M. M/S BIRLA CORPORATION  
LTD.

(Misc. Application No.711 of 2017)

IN

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(Contempt Petition No. 785 of 2018)

IN

(Civil Appeal No.4482 of 1998)

FEBRUARY 23, 2018

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**[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]**

*Industrial Disputes Act, 1947 – s.17-B – Order under – Enforcement of – Services of applicant-employee terminated by the employer-Corporation by order dtd. 01.09.1985 – Applicant raised an industrial dispute before Industrial Tribunal which answered the reference in favour of Corporation holding that applicant was not a workman within the meaning of expression “workman” – Writ petition filed by applicant, allowed – Division Bench dismissed the LPA by Corporation – SLP filed by Corporation – Vide interim order dtd. 04.05.1999 passed u/s.17B, Corporation was directed by the Supreme Court to pay to the applicant full wages last drawn by him on 01.09.1985 inclusive of maintenance allowance admissible to him – SLP allowed by Order dtd. 31.10.2000 – Present contempt petition filed by applicant alleging that interim order dtd. 04.05.1999 has not yet been complied with by the Corporation – Held: Notwithstanding the allowing of the appeal of Corporation, by Supreme Court vide order dtd. 31.10.2000, order dtd. 04.05.1999 passed in the said appeal remains legal and valid and being independent in nature, the same has to be given effect to in favour of the applicant-employee, if not found complied with by the employer-Corporation – An order passed u/s.17-B does not merge with the final order passed in the appeal and being an independent order, it remains alive for enforcement – Applicant is held entitled to claim Rs.7,50,000/- towards all his claims in full and final settlement pursuant to the order dated 04.05.1999 – Contempt of Courts Act, 1971.*

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A        *Industrial Disputes Act, 1947 – s.17-B – Object and Scope of – Discussed.*

**Disposing of the contempt petition, the Court**

B        **HELD: 1.1** Notwithstanding allowing of the appeal filed by the Corporation by this Court by order dated 31.10.2000, so far as order dated 04.05.1999 passed in the aforesaid appeal is concerned, it remains legal and valid and being independent in nature, the same has to be given effect to in favour of the applicant (employee), if not found complied with by the employer (Corporation). [Para 19] [535-C]

C        *Dena Bank vs. Kiritikumar T. Patel (1999) 2 SCC 106 : [1997] 5 Suppl. SCR 263 – relied on.*

D        **1.2** Even if the employer eventually succeeds in its appeal against his employee, in which such order was passed during the pendency of employer's appeal, the employer continues to remain under legal obligation to comply with such order passed by the Court under Section 17-B of Industrial Disputes Act, 1947 in favour of the employee. An order passed under Section 17-B of Act does not merge with the final order passed in the appeal and being an independent order, it remains alive for enforcement. It is not disputed that the Corporation has not yet complied with the order dated 04.05.1999 much less in letter and spirit. [Paras 20, 21] [535-D-E]

F        **1.3** The matter has been examined keeping in view the nature of controversy, long pendency of the case, nature of interim order passed by this Court, offer made by the Corporation for settlement and the sum payable to the applicant under various heads etc. The amount payable to the applicant pursuant to the order dated 04.05.1999 has been worked out under different Heads, such as monthly salary, its arrears, leave encashment, gratuity, bonus, interest, if held payable, on the entire sum at a reasonable rate from 04.05.1999. Having examined the matter and taking into consideration the aforementioned several relevant factors, the applicant is held entitled to claim from the Corporation a total sum of Rs.7,50,000/- towards all his claims arising out of his employment dispute with the Corporation in full and final

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settlement pursuant to the order dated 04.05.1999. [Paras 22-24] [535-F-H; 536-A] A

1.4 It is stated at the bar that the applicant is in occupation of the Corporation quarter, which had been allotted to him by virtue of his employment. If that be so, the applicant will vacate the quarter within three months from the date of this order as an outer limit. On applicant's vacating the quarter within the time fixed by this Court, the Corporation will accordingly pay to the applicant Rs.7,50,000/-. [Paras 26, 27] [536-B-D] B

*Dena Bank vs. Ghanshyam* [2001] 3 SCR 591 : (2001) 5 SCC 169 – referred to. C

**Case Law Reference**

[1997] 5 Suppl. SCR 263      relied on      Para 17  
[2001] 3 SCR 591      referred to      Para 18

CIVIL APPELLATE JURISDICTION : Misc. Application No.711 of 2017 in Contempt Petition No. 785 of 2018 in Civil Appeal No.4482 of 1998 D

From the Judgment and Order dated 23.02.1998 of the High Court of Calcutta in Appeal No. F.M.A.T. No. 2186 of 1996.

B. Bhattacharya, Sr. Adv. for the Appellant. E

Rakesh Sinha, Pawan Kumar Bansal, T. Mahipal, Advs. for the Respondent.

Rajeshwar Mahto (Petitioner-in-person)

The Judgment of the Court was delivered by F

**ABHAY MANOHAR SAPRE, J.** 1. This contempt petition arises out of the two orders, one dated 04.05.1999 and final order dated 31.10.2000 passed by this Court (Three Judge Bench) in Civil Appeal No. 4482 of 1998. This application is filed by the respondent (employee) of the said appeal. G

2. To appreciate the grievance of the applicant herein(employee)-respondent of the aforementioned appeal, it is necessary to set out the relevant facts which led to the filing of civil appeal in this Court which later gave rise to filing of this contempt petition.

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A            3. The applicant was an employee of one limited Company called  
"Birla Corporation Ltd." (hereinafter referred to as "the Corporation"),  
which is controlled by Birla Group. The respondent herein is the General  
Manager of the Corporation. The applicant was appointed on 04.12.1974.  
However, the applicant's services were terminated by the Corporation  
B by order dated 01.09.1985. On the date of termination, the applicant's  
last drawn salary was Rs.1185/-.

             4. The applicant felt aggrieved of his termination and raised an  
industrial dispute before the Industrial Tribunal under the Industrial Dispute  
Act, 1947 (hereinafter referred to as "the Act") for deciding the legality  
and correctness of his termination order.  
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             5. By award dated 22.11.1991, the Industrial Tribunal answered  
the reference in favour of the Corporation. It was held that the applicant  
was not a workman within the meaning of the expression "workman" as  
defined in Section 2 (s) of the Act and, therefore, the Government Order  
by which the reference was made to the Industrial Tribunal is not  
D maintainable.

             6. The applicant felt aggrieved and filed writ petition before the  
High Court at Calcutta. The Single Judge of the High Court, by order  
22.03.1996 allowed the writ petition and while setting aside the award of  
the Industrial Tribunal held that the applicant was the workman and,  
E therefore, the Government was right and had the power to make an  
industrial reference to the Industrial Tribunal. The Single Judge, therefore,  
set aside the order of the Industrial Tribunal.

             7. The Corporation felt aggrieved and filed an intra Court appeal  
before the Division Bench of the High Court. By order dated 31.03.1998,  
F the Division Bench dismissed the appeal and upheld the order of the  
Single Judge giving rise to filing of the appeal before this Court by the  
Corporation being S.L.P.(c) No. 8518/1998. This Court granted leave  
and accordingly it was registered as Civil Appeal No. 4482 of 1998.

             8. By order dated 31.10.2000, this Court allowed the Corporation's  
G appeal and while setting aside the orders of the Division Bench and  
Single Bench dismissed the writ petition filed by the applicant herein. As  
a consequence, the award passed by the Industrial Tribunal holding that  
the applicant was not a workman was upheld.

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9. It is pertinent to mention here that during the pendency of the Corporation's Civil Appeal in this Court, the Corporation had prayed for grant of the stay of the impugned order of the Division Bench. A

10. This Court, by interim order dated 04.05.1999, directed the Corporation to pay to the applicant full wages last drawn by him on 01.09.1985 inclusive of maintenance allowance admissible to him under the Rules on the applicant's furnishing an affidavit to the effect that he had not gainfully employed elsewhere. The Corporation was asked to pay the aforesaid amount of full wages last drawn with effect from 01.05.1998 onwards till the final disposal of the appeal. The Corporation was directed to pay the arrears within four weeks and future monthly emoluments by 7<sup>th</sup> of each succeeding month. B C

11. Likewise, while finally allowing the Corporation's appeal on 31.10.2000, this Court recorded an offer made by the Corporation that notwithstanding the result of the appeal, the Corporation is still ready and willing to pay a sum of Rs.2 lakhs to the applicant towards full and final settlement to the satisfaction of the applicant's claim which they had offered earlier during the pendency of the appeal (see last Para of final order dated 31.10.2000). D

12. With these background facts, the applicant- employee has filed the contempt petition alleging therein that the interim order dated 04.05.1999 passed by this Court during the pendency of Civil Appeal No. 4482/1998 has not yet been complied with by the Corporation. It is alleged that notwithstanding the disposal of the civil appeal in Corporation's favour by this Court by order dated 31.10.2000, so far as the interim order dated 04.05.1999 passed under Section 17-B of the Act is concerned, the same has to be complied with by the Corporation by paying to the applicant all monetary benefits pursuant to such order. It is alleged that since the Corporation has offered very less sum as compared to what was actually payable to the applicant (employee) pursuant to the order dated 04.05.1999, the applicant did not accept the sum offered to him. E F

13. The Corporation has filed its reply on affidavit. They have raised certain technical pleas but, in fact, have admitted that so far they have not paid any amount to the applicant in compliance of the order dated 04.05.1999. It is stated by the Corporation that they offered the G

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A sum to the applicant but he declined to accept the same stating that what was offered to him was less as compared to his actual entitlement.

14. With the aforementioned background facts, the question arises as to whether the applicant (employee) is entitled to claim any monetary benefits pursuant to the order dated 04.05.1999 and, if so, how much?

B 15. Since the applicant herein was appearing in-person, we requested Mr. B. Bhattacharya, learned senior counsel, who was present in Court, to appear on behalf of the applicant and render assistance. On our request, Mr. Bhattacharya appeared and rendered his valuable assistance. We record our appreciation for him. Mr. Rakesh Sinha, learned  
C counsel appeared for the respondent.

16. Having heard learned counsel for the parties and on perusal of the record of the case, we dispose of this contempt petition with the following directions:

D 17. The Object and the Scope of Section 17-B of the Act was examined by this Court in **Dena Bank vs. Kiritikumar T. Patel**, (1999) 2 SCC 106. This Court in Paras 7 and 21 held as under:

E **“The object of Section 17-B is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court. 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 the Supreme Court, 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**  
F **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**  
G **has been granted under the award that is under challenge.**  
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**Therefore, the words “full wages last drawn” must be given their plain and material meaning and they cannot be given the extended meaning.”** A

18. The aforementioned principle of law was approved by this Court (Three Judge Bench) in **Dena Bank vs. Ghanshyam**, (2001) 5 SCC 169 (see Paras 9 and 10). B

19. In the light of the aforementioned principle of law laid down by this Court, one cannot now dispute the legal proposition emerging therefrom that notwithstanding allowing of the appeal filed by the Corporation by this Court by order dated 31.10.2000, so far as order dated 04.05.1999 passed in the aforesaid appeal is concerned, it remains legal and valid and being independent in nature, the same has to be given effect to in favour of the applicant (employee), if not found complied with by the employer (Corporation). C

20. In other words, even if the employer eventually succeeds in its appeal against his employee, in which such order was passed during the pendency of employer’s appeal, the employer continues to remain under legal obligation to comply with such order passed by the Court under Section 17-B of the Act in favour of the employee. To put it in short, an order passed under Section 17-B of Act does not merge with the final order passed in the appeal and being an independent order, it remains alive for enforcement. D E

21. As mentioned above, it is not disputed that the Corporation has not yet complied with the order dated 04.05.1999 much less in letter and spirit.

22. We have examined the matter keeping in view the nature of controversy, long pendency of the case, nature of interim order passed by this Court, offer made by the Corporation for settlement and the sum payable to the applicant under various heads etc. F

23. We have also worked out the amount payable to the applicant pursuant to the order dated 04.05.1999 under different Heads, such as monthly salary, its arrears, leave encashment, gratuity, bonus, interest, if held payable, on the entire sum at a reasonable rate from 04.05.1999. G

24. Having examined the matter and taking into consideration the aforementioned several relevant factors, we are of the considered view that the applicant is held entitled to claim from the Corporation a total H

- A sum of Rs.7,50,000/- (Seven Lakhs Fifty thousand) towards all his claims arising out of his employment dispute with the Corporation in full and final settlement pursuant to the order dated 04.05.1999.

25. In other words, the Corporation will pay a sum of Rs.7,50,000/- (Seven Lakhs fifty Thousand) to the applicant (employee) towards the applicant's all monetary claims in relation to his employment dispute with the Corporation in full and final settlement.
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26. It is stated at the bar that the applicant is in occupation of the Corporation quarter, which had been allotted to him by virtue of his employment. If that be so, the applicant will vacate the quarter within three months from the date of this order as an outer limit.
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27. On applicant's vacating the quarter within the time fixed by this Court, the Corporation will accordingly pay to the applicant Rs.7,50,000/- by demand draft within one week from the date of vacating the quarter.

- D 28. With these directions, the contempt petition stands disposed of. Rule Nisi, if issued, stands discharged against the alleged contemnor.