

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/LETTERS PATENT APPEAL NO. 1023 of 2021
In R/SPECIAL CIVIL APPLICATION NO. 11739 of 2020
With CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1023 of 2021**

With

**R/LETTERS PATENT APPEAL NO. 1024 of 2021
In SPECIAL CIVIL APPLICATION NO. 11739 of 2020
With CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1024 of 2021
In SPECIAL CIVIL APPLICATION NO. 11739 of 2020**

With

**R/LETTERS PATENT APPEAL NO. 1025 of 2021
In SPECIAL CIVIL APPLICATION NO. 11738 of 2020
With CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1025 of 2021
In SPECIAL CIVIL APPLICATION NO. 11738 of 2020**

With

**R/LETTERS PATENT APPEAL NO. 1026 of 2021
In SPECIAL CIVIL APPLICATION NO. 11738 of 2020
With CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1026 of 2021
In SPECIAL CIVIL APPLICATION NO. 11738 of 2020**

With

**R/LETTERS PATENT APPEAL NO. 1027 of 2021
In SPECIAL CIVIL APPLICATION NO. 11741 of 2020
With CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1027 of 2021
In SPECIAL CIVIL APPLICATION NO. 11741 of 2020**

With

**R/LETTERS PATENT APPEAL NO. 1028 of 2021
In SPECIAL CIVIL APPLICATION NO. 11741 of 2020
With CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1028 of 2021
In SPECIAL CIVIL APPLICATION NO. 11741 of 2020**

With

**R/LETTERS PATENT APPEAL NO. 1029 of 2021
In SPECIAL CIVIL APPLICATION NO. 11742 of 2020
With CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1029 of 2021
In SPECIAL CIVIL APPLICATION NO. 11742 of 2020**

With

**R/LETTERS PATENT APPEAL NO. 1030 of 2021
In SPECIAL CIVIL APPLICATION NO. 11742 of 2020
With CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1030 of 2021
In SPECIAL CIVIL APPLICATION NO. 11742 of 2020**

With

**R/LETTERS PATENT APPEAL NO. 1031 of 2021
In SPECIAL CIVIL APPLICATION NO. 11743 of 2020
With CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1031 of 2021
In SPECIAL CIVIL APPLICATION NO. 11743 of 2020**

With

**R/LETTERS PATENT APPEAL NO. 1032 of 2021
In SPECIAL CIVIL APPLICATION NO. 11743 of 2020
With CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1032 of 2021
In SPECIAL CIVIL APPLICATION NO. 11743 of 2020**

With

**R/LETTERS PATENT APPEAL NO. 1033 of 2021
In SPECIAL CIVIL APPLICATION NO. 11744 of 2020
With CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1033 of 2021
In SPECIAL CIVIL APPLICATION NO. 11744 of 2020**

With

**R/LETTERS PATENT APPEAL NO. 1034 of 2021
In SPECIAL CIVIL APPLICATION NO. 11744 of 2020
With CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 1034 of 2021
In SPECIAL CIVIL APPLICATION NO. 11744 of 2020**

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR. JUSTICE S.H.VORA**

and

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

INEOS STYROLUTION INDIA LIMITED
Versus
SHAILESHBHAI MANIBHAI PATEL

Appearance:

MR K M PATEL SR. ADVOCATE with MR. VARUN K.PATEL(3802) for the Appellant(s) No. 1

MR P C CHAUDHARI(5770) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE S.H.VORA
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 21/01/2022

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE)

1. All the Letters Patent Appeals are taken up for hearing with the consent of learned advocates appearing for the respective parties as common issue arises in all these appeals wherein the

appellant company is seeking a direction to vacate the order to comply with the provisions of Section 17(B) of the Industrial Disputes Act, 1947 to pay the wages from the date of the filing of the writ petition and in the alternative to hold that the respondents workmen shall not be entitled to the wages higher than the minimum rates of wages payable from time to time as per the Minimum Wages Act, 1948 as "full wages last drawn" under Section 17(B) of the Act.

2. The brief facts leading to filing of the present appeals are as follows :-

2.1 It is the case of the appellant that the respondents herein were appointed in the company and their services came to be terminated as per the terms & conditions of their appointment letter. They were also paid three months' notice pay.

2.2 That the respondents herein raised an industrial dispute against the appellant company for reinstatement with full back wages which culminated into the Award passed by the Labour Court, Bharuch. By individual award, the learned Labour Court was pleased to allow the claim of the respondents and directed the appellant to reinstate them with continuity of service and 20% back wages. Feeling aggrieved by individual awards, the appellant filed separate Special Civil Applications against each of the awards challenging the reinstatement and the back wages. The learned Single Judge was pleased to issue rule in all the Special Civil Applications. It was further directed that during the pendency of the Special Civil Applications, there shall be ad-interim relief subject to provisions of Section 17(B) of the Industrial Disputes Act, 1947.

2.3 Aggrieved, the appellant herein filed Civil Applications for direction in all the Special Civil Applications praying to vacate

the direction to comply with Section 17(B) of the Industrial Disputes Act and in the alternative to hold that the respondents workmen shall not be entitled to wages higher than the minimum rates of wages payable from time to time as per Minimum Wages Act, 1948 as last drawn wages under Section 17(B) of the Industrial Disputes Act. By the impugned orders in the individual Civil Applications in the Special Civil Applications, the learned Single Judge was pleased to dismiss the said applications for direction with a direction to pay the wages under the provisions of Section 17(B) of the Industrial Disputes Act to the workmen from the date of filing of the writ petitions and further to continue to pay the same till the disposal of the writ petitions. It was also clarified by the impugned orders that such wages shall be equivalent to the last drawn salary of the workman at the time of his termination.

3. Heard learned senior counsel Mr. K. M. Patel assisted by learned advocate Mr. Varun Patel for the appellant and learned advocate Mr. P. C. Chaudhari for the respondents/caveators.

4. Learned senior counsel Mr. K. M. Patel submitted that the respondents were working as officers in the Management Cadre of the appellant company and that the respondents were getting the benefit as per performance appraisal method device, whereas the workmen in the appellant company were receiving wages and other benefits as per the settlement under Section 2(p) of the Industrial Disputes Act. It was submitted that the Labour Court failed to appreciate that the respondents were not workman within the meaning of Section 2(s) of the Industrial Disputes Act. It was then submitted that since the respondents are not the workman within the meaning of Section 2(s), they are not entitled to get any benefit under Section 17(B) of the Industrial Disputes Act. It was further submitted that the purpose of payment under the provisions of Section 17(B) requires the employer to pay the last drawn wages during the pendency of the proceedings before

the High Court and requirement of the workman filing an affidavit of being unemployed is for the purpose of relieving the workman from such hardship on account of delay in implementation of the award of reinstatement in his favour. The payment is in the nature of subsistence allowance which is not refunded or recoverable from the workman even if the employer succeeds in the petition and the award of the reinstatement is set aside. In this regard, learned senior counsel Mr. K. M. Patel has relied upon the judgment of the Hon'ble Supreme Court in case of **Dena Bank vs. Kiritkumar T. Patel [AIR 1998 SC 511]**. He has specifically referred to paragraph 20 of the said judgment to highlight the object of Section 17(B), which reads as under :-

“The object underlying the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation to the award. The payment which is required to be made by the employer to the the workman under section 17B is in 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.”

4.1 It was submitted that the provisions of Section 17(B) is to ensure that the workman gets a reasonable amount for subsistence but not a windfall or unjust enrichment without doing any work. It was therefore submitted that the wages of the respondents at the time of their termination far exceeds such subsistence allowance and the same cannot be paid without taking work from them and therefore, appropriate wages in the present cases would be the minimum wages for the workman category notified under the Minimum Wages Act which is around Rs.10,000/- per month. It was also submitted that in the present cases, if the literal interpretation to the term “full wages last drawn” is given, then the appellant company will have to pay a sum more than five times the minimum rate of wages as notified under the Minimum Wages Act in all these cases and then, such a payment will not be

in consonance with the object and purpose of Section 17(B) of the Industrial Disputes Act.

4.2 It was further submitted by learned senior Counsel Mr. K. M. Patel that in case, this Court is of the opinion that if literal meaning to the phrase “full wages last drawn” is to be given, then in the alternative, the respondents workmen would be entitled for the wages only from the date of filing of the affidavit in terms of Section 17(B) before the Hon’ble Court. In this regard, learned senior counsel has placed reliance on the judgment of the Hon’ble Apex Court in case of **Uttaranchal Forest Department Corporation and anr. vs. K. B. Singh and ors. [(2005) 11 SCC 449]**. He has further placed reliance on another **judgment of the Division Bench of this Court in Letters Patent Appeal No. 531 of 2008 dated 12.05.2011**. In this background, learned senior counsel Mr. Patel urged this Court to set aside the impugned direction to pay the last drawn wages to the respondents and direct that they be paid wages as per the Minimum Wages Act.

5. Learned advocate Mr. P. C. Chaudhari appearing for the respondents has supported the impugned order and submitted that the law on the issue with regard to the payment of wages under Section 17(B) of the Industrial Disputes Act is now well settled and the impugned order does not require any interference. It was submitted by him that the Industrial Disputes Act being a beneficial legislation meant to protect the right of the workman cannot be interpreted to the detriment of the workman. The phrase “full wages last drawn” has to be given its literal meaning only. The said phrase cannot be read down to interpret it as wages under the Minimum Wages notified under the Minimum Wages Act, 1948. He has submitted that in fact, the respondent workmen can claim more wages over and above the last drawn wages under the Industrial Disputes Act. He has further submitted that in the present cases, the learned Single Judge has directed the payment of wages under

Section 17(B) of the Industrial Disputes Act from the date of filing of the writ petitions till the disposal of the said writ petitions. He submitted that such a view has been taken in catena of decisions by this Court. Learned advocate also relied on the judgment in case of **Dena Bank (supra)**.

6. We have heard learned advocates appearing for the respective parties at length and also perused the documents on record.

7. It is seen that the following two issues came to be raised before the learned Single Judge by the appellant company for consideration :-

(I) Whether the respondents workmen are to be paid the minimum wages as per the Minimum Wages Act, 1948 in lieu of full wages last drawn as per the provisions of Section 17(B) of the Industrial Disputes Act.

(II) And, such wages are to be paid from which date i. e. from the date of the award or from the date of filing of the writ petition or from the date of filing of the affidavit in terms of Section 17(B) of the Act.

8. Section 17(B) of the Industrial Disputes Act reads as under :-

“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.]”

9. The Hon’ble Supreme Court as well as this Court have held that the provisions of Section 17(B) of the Act have to be read in a plain manner without adding or substituting or omitting any word and it is not open to the court to interpret or alter or amend the same. It is the duty of the Court to interpret the provisions so as to make it more meaningful and workable so that it achieves the objective for which it has been enacted by the Parliament. The Industrial Disputes Act being social and beneficial legislation, it is not open to the Court to read down the legislative intent to the detriment of the workman who has been terminated from service. After the award of reinstatement, if the employer does not want to reinstate the workman, the provisions of Section 17(B) would come into force on the filing of the affidavit by the workman stating that he is unemployed. Unless, contrary is proved by the employer, a workman will be entitled to payment of full wages last drawn since there is an order of reinstatement in his favour. While interpreting the provisions of the statute, the Court does not have the power to give a different meaning to the literal interpretation of the word used in the enactment as the same would amount to rewriting the provisions.

10. Secondly, reliance placed by learned senior counsel Mr. K.M.Patel on the decision in the case of Uattranchal Forest Development Corporation and Anr. (supra) is misplaced and not

applicable to the present case for the simple reason that it appears that in the said case before the Hon'ble Supreme Court, the workman had failed to file affidavit as required under section 17(B) of the I.D.Act and therefore, the Hon'ble Supreme Court granted benefit of provision of section 17(B) accrued from the date of filing of the affidavit in the Hon'ble Supreme Court. Here, it is not so. Further, the expression used in section 17(B) "during period of pendency of such proceedings before the High Court or Hon'ble Supreme Court" indicates that the workman is entitled for payment of full wages last drawn by him during the pendency of proceedings in the High Court and not from the date of filing of affidavit as canvassed by learned senior counsel Mr. K.M.Patel. The purpose of filing affidavit by the workman is to bring fact on record that the workman was not employed in any establishment during the period of pendency of proceedings either in the High Court or Hon'ble Supreme Court.

11. So far as decision relied by learned senior counsel Mr. K.M.Patel in the matter of Rang Pharmaceutical Indus. Through Partner v/s. Ramprakash R. Upadhyay rendered in LPA No.531 of 2008 is concerned, it needs no further discussion because in the said case, Division Bench of this Court, directed payment under section 17(B) of the I.D.Act from the date of affidavit filed by the workman and not from the date of award. Said decision of Division Bench was considered by this Court in subsequent decision rendered in Solaris Chemtech Industries Ltd. v/s. Musa Sakur Sama in LPA No.1787 of 2017 and it is held that no absolute proposition of law is laid down by the Hon'ble Supreme Court that the workman shall be entitled to the wages under section 17(B) of the I. D. Act only from the date of filing of the affidavit in the proceedings before the High Court.

12. Thus, neither of the two decisions relied by learned senior counsel Mr.K.M.Patel as referred herein above in para 4.2 is helpful to the appellant, in view of mandate of section 17(B) of the I. D. Act. In other words, what the workman is entitled to get payment of wages under section 17(B) of the Act is full wages last drawn and that too during the pendency of proceedings before the High Court. So if interpretation as suggested by learned senior counsel Mr.K.M.Patel is accepted, then the whole object and purpose of section 17(B) would be frustrated and it will amount to re-writing and re-framing legislation, which the Court has no power to legislate. We have not found ambiguity in the provisions of section 17(B) of the I. D. Act and therefore, having regard to plain reading of section 17(B) of the I. D. Act, no illegality in the order passed by the learned Single Judge is noticed by us.

13. In our view, the legal position as enunciated by the Apex Court and by this Court in various decisions has been rightly appreciated by the learned Single Judge. The contention of learned senior counsel Mr. K. M. Patel cannot be accepted to read down the phrase “full wages last drawn” and has to be rejected as rightly done so by the learned Single Judge.

14. For the aforesaid reasons, the order passed by the learned Single Judge needs no interference. The appellant is directed to pay full wages last drawn to each of the workmen in terms of the provisions of Section 17(B) from the date of filing of the writ petition till its disposal.

15. The Letters Patent Appeals stand dismissed. No order as to costs. Consequently, connected Civil Applications for stay do not survive and stand disposed of accordingly.

16. The Registry to keep a copy of this order in each appeal.

(S.H.VORA, J)

(ANIRUDDHA P. MAYEE, J.)

Further Order

After pronouncement of judgment, learned senior counsel Mr. K. M. Patel seeks ten weeks' time to pay the arrears to the respondents. Time is granted with a rider that no further extension shall be granted on any ground.

(S.H.VORA, J)

(ANIRUDDHA P. MAYEE, J.)

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THE HIGH COURT
OF GUJARAT

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