

CASE NO.:
Appeal (civil) 1815 of 2008

PETITIONER:
M/S TEXMACO LTD. CEMENT DIVISION

RESPONDENT:
A.S. NARASIMHAM

DATE OF JUDGMENT: 07/03/2008

BENCH:
ALTAMAS KABIR & J.M. PANCHAL

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO. 1815 OF 2008
[Arising out of SLP(C)No. 24836 of 2005]

Leave granted.

We have heard learned counsel for the parties.

It appears that the respondent herein was appointed to look after sales promotion work by the appellant herein with effect from 19th May, 1986. His services were thereafter terminated on 21st September, 1993, but on a representation made by him, he was re-appointed by the appellant and was put on probation for six months. Thereafter, on 20th October, 1994 his probation was extended. Subsequently, by letter dated 20th October, 1994,

he was informed that his period of probation would be over on 16th November, 1994, and that thereafter, he would be relieved from service after working hours on the same date.

Aggrieved by the said communication, the respondent raised a dispute which was referred to the Industrial Tribunal-cum-Labour Court, Anantpur. The said reference was ultimately dismissed by the learned tribunal, which permitted the respondent to file writ petition before the Andhra Pradesh High Court. The High Court allowed the writ application and set aside the Award passed by the Labour Court with a direction to the appellant to reinstate the respondent in service as a permanent employee of the company, with continuity of service, attendance benefits and full back-wages.

Aggrieved by the said order of the learned Single Judge, the appellant moved the Division Bench of the High Court, which passed an interim order on 16th September, 2005 to the following effect:-

"Heard both sides. There shall be interim suspension pending appeal subject to compliance of Section 17-B of the I.D. Act from the date of the order."

It is the said interim direction of the Division Bench of the High Court which is the subject matter of the present appeal.

Mrs. Maheshwari, learned counsel appearing for the appellant submitted that the High Court had erred in directing that the provisions of Section 17-B of the Industrial Disputes Act, 1947 be complied with as a condition for grant of stay. According to her, the Section itself indicates that the benefit of the Section would be available only against an Award of a Labour Court, Tribunal or National Tribunal which is stayed by a higher court. Mrs. Maheshwari further submitted that in addition to the above, the Division Bench of the High Court had also failed to take into consideration the proviso to Section 17-B which provides that either the High Court or the Supreme Court in passing an order under

Section 17-B would have to be satisfied that the workmen had not been gainfully employed elsewhere and had not been receiving adequate remuneration during the period in question.

Mr. R. Santhan Krishnan, learned counsel appearing for the respondent-workman submitted that the provisions of Section 17-B had to be considered in the spirit in which it was enacted and introduced in the Industrial Disputes Act, namely, to provide a means of subsistence to the workmen during the period when the Award made in his favour stood suspended by way of challenge before the higher forum. According to him though the provisions of Section 17-B may not strictly apply in respect of an order of reinstatement passed by the High Court, this Court had in the case of Dena Bank Vs. Kiritkumar T. Patel, 1999(2)SCC-106, held that the powers of the High Court and the Supreme Court under Articles 226 and 136 of the Constitution were not in any way restricted to the provisions of

Section 17-B of the Industrial Disputes Act, but that both the High Court and the Supreme Court could give directions which were similar to those contained in Section 17-B to provide

interim relief to the workmen during the pendency of a challenge to the Award made in his favour. He also referred to another decision in the case of Dena Bank Vs. Ghanshyam, 2001 (5)SCC 169, where the earlier judgment had been followed.

Having considered the submissions made on behalf of the respective parties, although, we agree with the submissions made by Mrs. Maheshwari that Section 17-B of the Industrial Disputes Act would not strictly apply in the fact situation of this case, we also

agree with Mr. Krishnan that this Court under Article 136 of the Constitution has the power to grant relief similar to that contemplated under Section 17-B of the Industrial Disputes Act, since the object of Section 17-B, as indicated hereinbefore, is to provide interim relief to

the workman, who has an Award in his favour and which Award is challenged before the higher forum to prevent its implementation.

We, accordingly, see no reason to interfere with the order passed by the Division Bench of the High Court under appeal, but we also make it clear that the spirit of Section 17-

B of the Industrial Disputes Act has to be maintained as a whole and, accordingly, whatever relief is granted in terms of the directions given by the Division Bench of the High Court must also take into consideration the proviso to Section 17-B of the aforesaid Act.

The appeal is accordingly disposed of.

There will be no orders as to costs.

This order will be operative from the date of the order of reinstatement passed by the learned Single Judge of the High Court.