

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.786 OF 2016
IN
WRIT PETITION NO.3568 OF 2012**

Nemchand S Sabale : Applicant.
(Org.Respondent No.1)
versus
Spaco Carburettors (India)
Limited and anr. : Respondents.

Mr. Datta Mane i/by Mr. Suryakant J Lavte for the Applicant/ original Respondent No.1.
Mr. D J Bhange for the Respondent No.2/ original Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 03rd October 2016

P.C.

1 The above Civil Application has been filed invoking Section 17B of the Industrial Disputes Act. The Applicant herein is the original Respondent No.1 to the above Writ Petition and the Respondent No.2 herein is the original Petitioner, and the Respondent No.2 herein is the original Respondent No.1 in the above Petition. The above Petition was filed taking exception to the Award of the Labour Court dated 12/12/2011 by which the Reference in question was allowed and the Applicant herein was granted reinstatement with backwages.

2 As is necessary for an application under Section 17B of the Industrial Disputes Act, the same is sought to be founded on the fact that the

Applicant is unemployed. However, significantly in the Civil Application as filed there is no averment to the said effect but the said averment was sought to be introduced by way of an Additional Affidavit dated 12/04/2016 which was filed by the Applicant in support of the Civil Application.

3 It is required to be noted that though the above Petition came to be admitted on 16/12/2012, the Civil Application was affirmed on 29/07/2015 i.e. almost after a period of three and half years after the Petition was admitted, and though the Civil Application was affirmed on 29/07/2015 in fact it has been filed on 12/04/2016 which speaks volumes as regards the need of the Applicant and the urgency in filing the same.

4 Be that as it may, the averment as indicated above in support of the unemployment of the Applicant is controverted by the Respondent Nos.1 and 2 by filing separate affidavits. In so far as the Respondent No.2 is concerned, an affidavit has been filed by way one Nityananda Balkrishna Tadvalkar in which affidavit in paragraph 10 it has been stated that the Applicant has not stated as to what he was doing for the last so many years and how he and his family were surviving. It is also stated that the affidavit is false meaning thereby that it suffers from suppressio veri. It is also stated in the affidavit that on enquiries with the Provident Fund Authorities, it is found that the Applicant is employed with one ANSEC Human Resource Services Pvt.

Ltd. 110/1A, 2B, Tank Road, Shantinagar, Yerawada Pune on 13/12/2012 and his Provident Fund No. is MH/PUN/122585/19614. To the said affidavit are also annexed the documents in support of the case of the Respondent No.2 that the Applicant is employed with the said ANSEC Human Resource Services Pvt. Ltd. It is after the said affidavit was filed that the Applicant in his rejoinder has accepted his employment with the said ANSEC Human Resource Services Pvt. Ltd. The Applicant has therefore changed his stand and he now seeks to contend that he is entitled to the wages under Section 17B by applying the criteria of whether the wages he is earning are adequate. In support of the said contention the learned counsel for the Applicant sought to place reliance on the judgment dated 12/03/2010 of a learned Single Judge of this Court in Civil Application No.75 of 2010 in Writ Petition No.1399 of 2008 in the matter of Kirloskar Pneumatic Kamgar Sangh v/s. Kirloskar Pneumatic Company Ltd. The learned counsel for the Applicant also reiterated the case of the Applicant that adequacy of the wages would have to be seen by this Court whilst adjudicating upon the Application under Section 17B of the Industrial Disputes Act.

5 In my view, it is not possible to accept the aforesaid contentions of the learned counsel for the Applicant inter alia for the following reasons. Firstly, the Applicant does not seem to be in any dire need of wages as can be seen from the fact that the Civil Application has been filed almost after

the period of three and half years after the Petition being admitted and though the Civil Application was affirmed on 29/07/2015 it has been filed on 12/04/2016. Implicit in the said fact would be the fact that the Applicant seems to be gainfully employed elsewhere. Secondly it is required to be noted that the Applicant initially in the Civil Application as filed has not stated anything about his unemployment but has stated so thereafter in the additional affidavit that is filed. Significantly in the said additional affidavit there is not a whisper as regards what the Applicant was doing in the interregnum i.e. from the date of the Petition being admitted till filing of the above Civil Application. The least that is expected from the Applicant, who has filed an application under Section 17B of the Industrial Disputes Act, is a certain amount of candor. It was necessary for the Applicant to state that he was employed but the said employment does not bear him adequate wages. However, such an averment as indicated above is lacking. The above Civil Application therefore lacks bonafides and it would have to be said that the Applicant has not come with clean hands to this Court by making a true and full disclosure. In so far as the judgment of the learned Single of this Court is concerned, the facts in the said case were that the Applicant therein was selling Chinese goods from which he had intermittent income. It is in the said circumstances that the learned Single Judge held that the factum of the Applicant therein earning Rs.2000/- pm would not come in the way of the said Applicant from claiming the last drawn wages under Section 17B of the Industrial Disputes Act. The learned Single

Judge therefore did not countenance the contention made on behalf of the employer therein that the said amount be adjusted against the last drawn wages payable to the Applicant therein. However, the facts in the instant case are clearly distinguishable from the facts in the said case. In the instant case, lack of bonafides on the part of the Applicant is ex-facie clear from the facts as afore-stated. It is also required to be noted that ultimately if the Applicant succeeds in the above Writ Petition, he would be entitled to the payment of backwages as would be determined by this Court at the hearing of the above Writ Petition. This is in the context of the fact that the Applicant has already attained the age of 58 years, as on date. Hence no relief can be granted to the Applicant. The above Civil Application is accordingly rejected.

[R.M.SAVANT, J]