

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

**CIVIL APPLICATION NO. 492 OF 2017
IN
WRIT PETITION NO. 8703 OF 2014**

The General Manager,
Oriental Bank of Commerce

...Petitioner

vs.

Santosh S. Mulaje & Ors.

...Applicants/Respondents

**WITH
CIVIL APPLICATION NO. 2625 OF 2016
IN
WRIT PETITION NO. 8703 OF 2014**

Narsaiah Sayanna Deeti

...Applicant/orig.Respondent No.2

In the matter between

The General Manager,
Oriental Bank of Commerce

...Petitioner

vs.

Santosh S. Mulaje & Ors.

...Respondents

Ms.Lata Patne i/b. Vinod Joshi for Applicants/Respondents.
Mr.H. Kumar Vidyanathan with Uday Shenoy for Petitioner.

CORAM : S.C. GUPTE, J.

DATE : 3 JANUARY 2020

PC. :

Heard learned Counsel for the parties.

2 These two civil applications are made by the Respondents to the writ petition. The writ petition has been filed by the employer establishment challenging an award passed on a reference by Central

Government Industrial Tribunal ('CGIT') at Mumbai, declaring termination of the Respondents' services by the Petitioner bank as illegal, and directing their reinstatement and regularisation in services as drivers with 20% back wages but with continuity of service and all consequential benefits. Rule was issued in the petition on 25 April 2016. At that time, a statement made by learned Counsel for the Petitioner that his client would deposit back wages at the rate of 20% of pay and allowances and consequential benefits as directed in the impugned award, was accepted. Subject to this statement, the order of reinstatement and regularisation of services was stayed with liberty to the Respondents to make an application under Section 17-B of the Industrial Disputes Act, 1947 as also an application for leave to withdraw the amounts to be deposited by the Petitioner as above. In pursuance of this order, 20% back wages were duly deposited by the Petitioner. Civil Application No.492 of 2017 seeks directions for withdrawal of the amount deposited by the Petitioner. Civil Application No.2625 of 2016 seeks payment of wages pending the present writ petition under Section 17-B of the Industrial Disputes Act, in pursuance of liberty reserved unto them by this court as above.

3 The only objection to the applications on behalf of the Petitioner employer is that the Respondents are duly employed and working elsewhere and earning wages. So far as the Respondents themselves are concerned, they have filed an affidavit in support of their application under Section 17-B, specifically averring that they were not employed in any establishment during the pendency of the writ petition and until date. Once the Respondent workmen assert that they were not employed during the relevant period, the onus to show that they were so employed shifts to the employer establishment. So far as the Petitioner is

concerned, nothing is brought on record to show that the Respondents were in fact employed in any establishment or earning income during the pendency of the petition herein. Accordingly, the applications of the Respondents deserve to be accepted.

4 Both civil applications are, accordingly, allowed in terms of prayer clause (a) thereof by permitting the Respondents to withdraw back wages deposited by the Petitioner against security acceptable to the Registry and directing the Petitioner to pay wages on the basis of last drawn wages to the Respondent workmen from the date of their application/s under Section 17-B of the Industrial Disputes Act, 1947.

(S.C. GUPTE, J.)