

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Tuesday, the Fourth day of February Two Thousand Twenty

PRESENT

THE HON`BLE MR JUSTICE R.SUBBIAH

WMP.Nos.1085, 1087 and 1094 of 2019

WP.No.2814 of 2013

THE MANAGEMENT
TRACTORS AND FARMS EQUIPMENT LTD.,
NO.35, NUNGAMBAKKAM HIGH ROAD,
CHENNAI-34

[PETITIONER IN ALL THE
PETITIONS]

Vs

1 THE PRESIDING OFFICER
PRINCIPAL LABOUR COURT, CHENNAI-104

[RESPONDENTS IN ALL THE
PETITIONS]

2 C.ARUMUGAM

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i)Modify the order dated 11.12.2013 in MP No.3 of 2013 in WP No.2814 of 2013 and permit the petitioner to discontinue the payment of last drawn salary to the 2nd respondent in terms of S.17B of the Industrial Disputes Act (in WMP.No.1085/2019);

(ii)issue directions to the 2nd respondent to refund the amount of Rs.5,53,200/- (Rupees five lakhs fifty three thousand and two hundred only) which he has been paid under S.17B of the Industrial Disputes Act in compliance of the order dated 11.12.2013 in MP No.3 of 2013 in WP No.2814 of 2013 passed by this Honourable Court, (in WMP.No.1087/2019)

(iii)Issue appropriate orders taking appropriate action against the 2nd respondent herein for having filed a false affidavit including the 2nd respondent for having committed perjury by suppressing facts in his affidavit dated November, 2013 before this Honourable Court, (in WMP.No.1094/2019)pending disposal of the above WP.No.2814/2013 respectively.

Order : These petitions coming on for orders upon perusing the petition and the respective affidavits filed in support thereof and upon hearing the arguments of **(*)M/S.S.SHIVATHANU MOHAN SANJAY** for M/S.S.RAMASUBRAMANIAM AND ASSO, Advocate for the petitioner in all the petitions and of **(*)M/S.N.G.R.PRASAD, for**

M/S.S.RAVI, Advocate for the 2nd respondent in all the petitions
the court made the following order:-

WMP No. 1085 of 2019 is filed by the Management of Tractors and Farms Equipment Limited, Chennai praying to modify the order dated 11.12.2013 passed in MP No. 3 of 2013 in WP No. 2814 of 2013 and permit the petitioner to discontinue the payment of last drawn salary to the second respondent in terms of Section 17-B of The Industrial Disputes Act pending disposal of the above writ petition.

2. WMP No. 1087 of 2019 is also filed by the Management praying to issue appropriate direction to the second respondent/employee to refund the amount of Rs.5,53,200/- which he has been paid under Section 17-B of The Industrial Disputes Act in compliance of the order dated 11.12.2013 in MP No. 3 of 2013 in WP No. 2814 of 2013 pending disposal of the above writ petition.

3. WMP No. 1094 of 2019 is yet another petition filed by the Management to issue appropriate orders to take action against the second respondent/employee for having filed a false affidavit, including the second respondent for having committed perjury by suppressing the facts in his affidavit dated November 2013 before this Court pending disposal of the above writ petition.

4. The writ petition has been filed by the Management challenging the award dated 26.11.2012 made in I.D. No. 111 of 2018 passed by the Presiding Officer, Principal Labour Court, Chennai in favour of the second respondent/employee, whereby the Labour Court directed the Management to reinstate the second respondent/employee in service with back wages, continuity of service and all other attendant benefits.

5. The second respondent herein was employed as a Mechanic in the petitioner Management for about seven years. While so, by letter dated 01.10.2007, the Management terminated the services of the second respondent as his performance of duty was not satisfactory. On receipt of the letter dated 01.10.2007, the second respondent wrote a letter dated 18.10.2007 that prior to his termination, he was not issued with any show cause notice and therefore the termination is bad. By the said letter dated 18.10.2007, the second respondent also requested the petitioner/Management to reinstate him in service by recalling the order of termination. In spite of the said letter dated 18.10.2007, the second respondent was not reinstated in service, therefore, he raised a dispute before the Labour Officer-I, Chennai under Section 2-A of the Industrial Disputes Act for conciliation. During conciliation, the Labour Officer could not arrive at a decision and the conciliation failed. The Labour Officer therefore submitted a failure report on 08.02.2018. Upon failure of conciliation, the second respondent filed I.D. No. 111 of 2018 before the Labour Court challenging the order of termination passed by the petitioner/management.

6. Before the Labour Court, the second respondent examined himself as WW1 and marked Exs. W1 to W12 on his side. On behalf of the Management, one Mr. R. Murali was examined as MW1 and Exs. M1 to M17 were marked. On considering the oral and documentary evidence, the Labour Court concluded that even according to the Management, the second respondent/employee did not indulge in any misconduct, however, it was alleged that he did not improve his performance of work. Further, the Labour Court held that the order of termination passed by the Management is against the principles of natural justice inasmuch as neither a show cause notice was issued nor an enquiry was conducted before terminating the services of the second respondent. Therefore, the Labour Court directed reinstatement of the second respondent/employee in service with backwages, continuity of service and all other attendant benefits. Aggrieved by the award dated 26.11.2012 passed by the first respondent/Labour Court in I.D. No. 111 of 2018, the Management has filed the present writ petition.

7. On notice, the second respondent/employee entered appearance through a counsel. The second respondent also filed MP No. 3 of 2013 in WP No. 2814 of 2013 praying to direct the writ petitioner/Management to pay last drawn wages to him as contemplated under Section 17-B of the Industrial Disputes Act from the date of award i.e., 05.02.2013 till the disposal of the writ petition.

8. When MP No. 3 of 2013 was taken up for hearing on 11.12.2013, this Court passed the following order:-

"The first respondent/Management is directed to pay last drawn wages to the petitioner in compliance with Section 17-B of the Industrial Disputes Act on or before 5th of every succeeding month from the month of January 2014 until further orders. The arrears of wages from 05.02.2013 to 31.12.2013 shall be paid within a period of four weeks from the date of receipt of a copy of this order.

This petition is ordered accordingly."

9. The said order dated 11.12.2013 was passed by this Court by taking note of the averments contained in the affidavit filed in support of MP No. 3 of 2013 to the effect that the second respondent is not gainfully employed anywhere. The said order dated 11.12.2013 has also been complied with by the

Management by paying the last drawn wages to the second respondent/employee month after month.

10. Now, the present Petitions are filed the Management contending that upon investigation, the Management came to know that the second respondent is employed as Senior Executive in M/s. JM Frictech India Private Limited, having office at Plot No.G-98, Sipcot Industrial Park, Vallam-Vadagal, Sriperumbadur - 602 105 and earning a salary of about Rs.35,000/- per month. Therefore, according to the learned counsel for the petitioner/Management, the second respondent has filed MP No. 3 of 2013 by suppressing his employment. In the affidavit filed in support of MP No. 3 of 2013, the second respondent has made a false averment as if he is not gainfully employed and only on the basis of such averment, this Court has passed the order dated 11.12.2013 directing the petitioner management to pay the last drawn wages to the second respondent/employee. According to the learned counsel for the petitioner/management, the second respondent has played fraud on the Court by filing a false affidavit and portrayed as if he was not gainfully employed anywhere and it amounts to perjury. The second respondent ought not to have filed such an affidavit when he was gainfully employed in a company and earning salary. According to the learned counsel for the petitioner/Management, for having filed such a false affidavit, the second respondent has to be prosecuted for perjury. In this context, the learned counsel for the petitioner relied on the Delhi High Court in the case of (**Ircon International Limited vs. Union of India and others**) reported in **2004 (3) L.L.N. 1086** wherein a learned single Judge observed that the respondent had furnished false information thereby obstructed the course of justice. Therefore, the learned single Judge directed the Registrar General of the Delhi High Court to file a complaint before the appropriate Court against the respondent therein and to set the criminal law in motion against him. Useful reference can be made to the Order passed by the Delhi High Court, which reads as follows:-

"19. In view of the foregoing discussions, I am satisfied that the documents and affidavit filed by respondent No.5 in this Court demonstrate that his plea regarding his not being in India since 1983 is *prima facie* not correct. A Court is thus required to ensure that the free flow of the unsoiled stream of justice is not obstructed. Of late litigants have tended to utter falsehoods with impunity as on several occasions they have managed to get away with such false statements owing to the unnecessary indulgence and misplaced generosity. False averments on oath not only vitiate the probity of judicial proceedings but considerable time is spent and expenses incurred for truth to be unravelled. Thus if a dishonest plaintiff secures and continues an interim order on a false averment

and a dishonest defendant delays the proceedings by pleading a false defence, then unless and until wilful lies are viewed sternly and dealt with effectively, the judicial system will suffer thereby harming the honest litigant. Contumacious falsehoods by unscrupulous litigants have been eating into the vitals of our judicial system and ought to be put down firmly. In the present case the respondent No.5 has continued to stand by his statements and has in fact sought to justify his question averments. He has also contended that the statement alleged to be false must be strictly made under S.17B of the Act and statements made in an affidavit, filed in response to the petitioner's application are not relevant.

20. Considering all the facts and circumstances discussed above, I am of the view that in the present case it will be appropriate and the ends of justice will be fully met upon a direction to the Registrar General of this Court to file a complaint before the appropriate Court and set the criminal law in motion against respondent No.5 not later than 31 January 2004. The above observations are only prima facie and the concerned Court before whom the complaint is filed will dispose of the complaint expeditiously independently of the prima facie conclusions recorded in this Judgment.

21. With the above observations, the application under Section 340 of the Criminal Procedure stands disposed of."

11. For the same proposition, the learned counsel for the petitioner also relied on the decision of this Court in the case of **Management of Tiruchendur Sarvodaya Sangam (represented by its President), Tiruchendur vs. A. Nagarajan and another** wherein this Court held that all that the workman has to do is to state the facts as they are, but he suppressed the facts and the other side proved that his affidavit was not correct. Therefore, it was concluded that the Court is not inclined to exercise the discretionary jurisdiction under Article 226 in favour of the second respondent, who has not stated the truth. The relevant portion of the order reads as follows:-

"12. On the other hand, S.17B only uses the word "adequate remuneration" not "gainful employment". The word "gainful" normally means "producing profit for advantage", "lucrative" whereas "adequate" means "sufficient" or "reasonably sufficient". Therefore,

it is enough if the High Court is satisfied that the workman is receiving reasonable remuneration during the period when the litigation is pending.

13. When the reinstatement is ordered, the worker must ordinarily get back the complete benefit of the order, and this means payment of full back-wages unless there are circumstances which justify any reduction in the amount. There could be various reasons for such reduction, e.g., prolonged litigation not on account of the employer. But if he has been lucratively employed in the *inter regnum* he will not get the benefit of back-wages. But in a case under Sec. 17 B the reinstatement is under challenge and is not final. The employer does not want to implement the award of reinstatement, he wants an order of stay, he can also prolong the litigation without feeling a pinch. But the worker who is denied the benefit of the award because of the order of stay, is bound to feel the pinch everyday in order to keep the home fires burning, so he may take up some employment. In such an event, even if he receives reasonable pay, he will not get the benefit of S.17B. The section itself is intended to provide an interim benefit so that the workman and his family are not driven to the streets. Perhaps that is why the legislature has thought it fit to use the words "adequate remuneration" instead of "gainful employment."

14. One has to bear in mind the inequality of status between the parties. While the management can withstand a prolonged litigation, the workman cannot and, therefore, the workman should be given the umbrella of protection.

15. But yet we find in this case that the workman has betrayed the confidence that has been reposed by the legislature on him for earning payment of full wages pending proceedings. The Legislature did not insist upon a very high standard of proof to show that he was not employed in any other establishment. It was sufficient if an affidavit is filed into the Court and, therefore, the workman was bound to have sworn to the truth and only the truth. Because it was on the basis of the affidavit alone that he would be granted the relief. It was open to the workman to have stated in his affidavit that while it is true that he is working in a driving school, the salary that he earns is not adequate or that the employment is not regular. Even before he

filed the petition claiming 17B wages, the management has stated that in the affidavit filed in support of the writ petition that the second respondent is working in a driving school. He could have sworn to the truth and the Court could have decided whether his earnings were adequate. But the workman does not do that, instead, he states a falsehood that he is not working in the driving school. Then comes the counter filed by the management, in which details are given to show that the workman is indeed working in the driving school. It is only thereafter that the workman comes up with the answer that he was not given a permanent job and that he would get some job in certain months and not in any other months and at the most he would get Rs.2000 or Rs.3000 and that the management cannot expect him to remain idle and that after 4 March 2005, the school became suspicious about him and not to give him job. This is again denied by the management. When the workman's first statement is proved to be false and a document has been produced before Court which is really not denied by the workman, i.e., the document relating to the workman's employment at the driving school, then the burden is heavier on the workman to show that he was only intermittently employed in the driving school and his wages was only Rs.3000. He could have obtained a certificate from the school to the effect that he was not regularly employed. The management has produced a certificate to show that he has been employed. When this Court is not satisfied that the workman's affidavit is true, the workman must be denied the wages under S.17B. An affidavit by its very definition is a written declaration under oath. No relief can be granted to a person who has sworn to something that has been proved to be wrong. The petitioner has himself to blame."

12. By placing reliance on the above decisions, the the learned counsel for the petitioner management would submit that the respondent, having filed a false affidavit before this Court and suppressed his gainful employment with another establishment, is not entitled for payment of last drawn wages as contemplated under Section 17B of the Industrial Disputes Act. In such circumstances, the learned counsel prayed for allowing these petitions as prayed for.

13. A counter affidavit has been filed by the second respondent in which it was stated that he was unceremoniously terminated by the petitioner management on 01.10.2007 and from that date, he was unable to meet even the basic needs of his family and led to starving. While so, in the year 2008, he got an employment in M/s. J.M. Fritech India for a meagre salary of Rs.8000/- whereas he was earning Rs.9,220/- per month as salary prior to his termination in the petitioner management. According

to the second respondent, he was getting a lesser salary than what he was receiving in the petitioner management and therefore, it could not be termed as a gainful employment. Even though he is presently earning a salary of Rs.28,200/- in the year 2009, had he continued in the employment in the petitioner company, he would have got Rs.45,000/- as salary per month. Thus, it was the contention of the second respondent that the present petitions are filed to compel the second respondent to repay the amount which he had received towards last drawn wages *inter alia* to avoid implementing the award passed by the Labour Court to reinstate him in service with back wages and other attendant benefits. Therefore, it was contended that the present petitions are devoid of any merits and prayed for dismissal of the petitions.

14. Heard the counsel for both sides and perused the material records placed. The second respondent was terminated by the petitioner management on 01.10.2007. Assailing the order of termination, the second respondent raised I.D. No. 111 of 2008 before the Labour Court. The Labour Court held that the termination of the second respondent is bad and directed his reinstatement by an award dated 26.11.2012. Challenging the award of the Labour Court, the petitioner management filed the above writ petition. Pending writ petition, the second respondent filed MP No. 3 of 2013 under Section 17-B of The Industrial Disputes Act. In the affidavit filed in support of the Petition, it was specifically stated in para No.5 and 6 as follows:-

"5. I submit that I am without employment from the date of my termination and I am not gainfully employed elsewhere. The monthly salary at the date of my termination is Rs.9,500/-. As a result of the interim stay granted by this Court dated 05.02.2013 in M.P. No. 1 of 2013 in W.P. No. 2814 of 2013, the petitioner management is refusing to provide employment to me. I am without employment for more than 5 years. Unless the interim stay granted against the award of the Labour Court is vacated, I will be put to great loss and hardship and irreparable loss.

6. I submit that I am not gainfully employed any where. Therefore, I am entitled to get last drawn wages from the date of the award of the Labour Court in I.D. No. 111 of 2008."

15. Thus, it is evident that on the basis of the statement made in the affidavit filed in support of M.P. No. 3 of 2013, this Court directed the petitioner management to comply with the provisions of Section 17 B of The Industrial Disputes Act by paying the last drawn wages to the second respondent. Now, it is proved that such statement made by the second respondent is false and without any bonafides. When the petitioner management came

to know about the beneficial employment of the second respondent with another company, the second respondent has filed a counter affidavit stating as though the salary that was offered to him in the year 2007, after his termination by the petitioner management, was in fact lesser and therefore, it is not a gainful employment. The fact remains that as on the date of filing the affidavit on 25.11.2013 in support of the Petition in MP No. 3 of 2013, the second respondent was employed in the company called M/s. J.M. Fritech India, however, such employment was suppressed by the second respondent while filing MP No. 3 of 2013. Whether the wages drawn by the second respondent is lesser or higher than the remuneration he had drawn prior to his termination, it will not be a ground for holding that the second respondent is not gainfully employed anywhere.

16. Be that as it may, from the counter affidavit of the second respondent/ employee, it is evident that the second respondent/employee had suppressed the material information that he has been employed at the time of filing MP No. 3 of 2013. The petitioner management has adequately proved that the second respondent was employed at the time when he filed MP No. 3 of 2013 seeking compliance of the provisions of Section 17 B of The Industrial Disputes Act. Therefore, for having suppressed the material particulars with regard to his employment, I am of the view that the second respondent is not entitled for continuance of payment of last drawn wages by the petitioner management. Accordingly, I am inclined to allow WMP No. 1085 of 2019 filed by the management to discontinue the payment towards last drawn wages to the second respondent/employee as contemplated under Section 17B of The Industrial Disputes Act.

17. Having held that the second respondent is not entitled for continuance of payment towards last drawn wages, as a corollary, WMP No. 1087 of 2019 filed by the Management has to be allowed.

18. As regards the prayer of the Petitioner Management made in WMP No. 1094 of 2019 to take action against the second respondent/employee for committing perjury by suppressing the facts in his affidavit dated November 2013 before this Court, this Court is of the view that the conduct of the petitioner can be taken into consideration by this Court at the time of final disposal of the writ petition.

19. In the result, WMP No. 1085 and 1087 of 2019 filed by the petitioner Management are allowed. The second respondent is directed to refund the amount of Rs.5,53,200/- which he has received from the petitioner Management as per the direction of this Court made in the order dated 11.12.2013 in MP No. 3 of 2013 in WP No. 2814 of 2013 within a period of four weeks from the date of receipt of a copy of this order.

20. Post the Writ Petition along with WMP No. 1094 of 2019 in the usual course.

-sd/-
04/02/2020

/ TRUE COPY /

**[(*) CORRECTED ORDER TO BE SUBSTITUTED
FOR THE ORDER ALREADY DESPATCHED ON
11/03/2020 REGARDING IN
THE ORDER APPEARANCE PORTION]**

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE PRESIDING OFFICER
PRINCIPAL LABOUR COURT, CHENNAI-104

C.C. to M/S.S.RAMASUBRAMANIAM AND ASSO Advocate Sr.No.1327

C.C. to M/S.S.RAVI Advocate Sr.No.1345

Order

in

WMP.Nos.1085, 1087 and 1094 of 2019

WP.No.2814 of 2013

Date :04/02/2020

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KP(09/03/2020)