

Vidya Amin

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

**INTERIM APPLICATION NO. 967 OF 2021
IN
WRIT PETITION NO. 12230 OF 2019**

Mahesh Anna Kadam	... Applicant
in the matter between	
Municipal Corporation of Greater Mumbai	
through Chief Fire Brigade Officer	... Petitioner
vs.	
Mahesh Anna Kadam	... Respondent

Mr. C.G. Jadhav a/w. Mr. Sunil V. Patil for the applicant.
Mr. Suresh Pakale a/w. Mr. Om Suryawanshi for the
respondent/MCGM.

**CORAM : G.S.KULKARNI, J.
DATE : 23 December, 2021**

P.C.:

1. Heard Mr. Jadhav, learned counsel for the petitioner and Mr. Pakale, learned counsel for the respondent.

2. This application has been filed under Section 17B of the Industrial Disputes Act, 1947 making the following prayers:

"A) That this Hon'ble Court may be pleased to direct the respondents to make payment of the last drawn monthly wages of Rs.9,000/- (Rupees Nine thousand only) from 04.03.2020, i.e., from the date of order of this Court, till final disposal of this petition, under Section 17B of the Industrial Disputes Act, 1947 by crediting his Saving Bank Account no. 60378757906, Bank of Maharashtra, Branch : Dhebewadi, IFSC : MAHB0000620;

B) Cost of this application be provided for."

3. The applicant was in service of the Municipal Corporation of Greater Mumbai (for short 'MCGM') on a temporary basis/daily wages. He was working as a Fireman since 11 February, 1997. The last drawn salary of the applicant was Rs.9,000/-. It was the case of the applicant that he was illegally removed from service of MCGM. He raised an industrial dispute, which was referred for adjudication before the Labour Court at Mumbai, being Reference(IDA) No. 308 of 2016. The Labour Court by its order dated 4 December, 2018 answered the reference in the affirmative by directing the MCGM to reinstate the services of the applicant by giving him benefits of continuity in service, with full back wages and with all consequential benefits with effect from 6 November, 2003. The MCGM had approached this Court in the above Writ Petition assailing the said order passed by the Labour Court. By an order dated 4 March, 2020, the Writ Petition was admitted with liberty to the petitioner to file an application under section 17B of the Industrial Disputes Act. Following observations of the Court are required to be noted, which reads thus:

"6. On the facts noted above, the petitioner herein deserves to be protected by an interim order of stay, subject of course to any application to be made by respondent no. 1 under section 17B of the Industrial Disputes Act, 1947. Accordingly, the impugned award dated 4 December, 2018 is stayed. Respondent no. 1 will have liberty to apply for wages under section of the

Industrial Disputes Act, 1947. As and when such application is made, it will be decided on its own merits. All rights and contentions of the parties in that behalf are kept open.”

4. In the application, it is stated the last drawn salary of the applicant was Rs.9,000/-. This application has been filed in pursuance of the liberty granted to him by this Court in the said order dated 4 March, 2020. An averment is made in paragraph 5 of the application that the applicant is not employed anywhere from the date of removal from service by the MCGM and that the applicant is not earning any income. He has stated that he is required to look after his ailing mother, and for financial assistance, he has to depend on friends and relatives. A further, affidavit has been filed by the applicant to state that during the pendency of the proceedings, the applicant has not been employed. A reply affidavit is filed on behalf of MCGM in this application. The affidavit raises an objection in paragraph 4 that the affidavit filed by the applicant is not in conformity with the provisions of Section 17B of the Industrial Disputes Act. Other contents of the affidavit are regarding the merits of the disputes, which is subject matter of adjudication and not relevant for the purposes of a Section 17B application.

5. There does not appear to be any substantial defence put up MCGM, in opposition to the prayers as made in the application. There is no contrary material placed on record that the statements as made by the applicant are not correct and/or that he is gainfully employed in some other employment and is earning salary or has any other source of income.

6. In the aforesaid circumstances, the application will be required to be allowed. It is, accordingly, allowed in terms of prayer clause (a). The MCGM is directed to make the deposit of the amount in the petitioner's account with effect from 4 March, 2020 till date within a period of two weeks from today.

(G.S.KULKARNI, J.)