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A.No.1962 of 2021
in C.S.No.186 of 2021

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KRISHNAN RAMASAMY.J.,

This application has been filed for a direction to the first respondent/first defendant to pay subsistence allowance of Rs.1,12,400/- per month being 50% of the applicant's gross salary due and payable with effect from 01.06.2017 till date and continue to pay on every 5th of English calendar month, pending disposal of the civil suit.

2. The case of the applicant/plaintiff is that the first respondent/first defendant was abruptly preventing the applicant/plaintiff from entering into the company and carrying on his employment from 01.06.2017 onwards, without any notice, charge memo or enquiry before seizing his employment. Further, the applicant contends that his remuneration and salary are also due and payable from 01.06.2017 to till date.

3. The further case of the applicant is that due to the illegal action of the first respondent, the applicant is out of employment, without any income and thereby, he has been struggling to meet out the family expenses and medical expenses of his parents and educational expenses of his son.



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4. The learned counsel appearing for the applicant would submit that the applicant is entitled for subsistence allowance under Article 21 of the Constitution of India since he has been deprived of his life by preventing him to carry out his employment and to maintain himself, but, he admits the fact that there is no provision of paying the subsistence allowance. However, this Court, can take into consideration the pathetic situation and the predicament that the applicant is facing due to his illegal termination. Hence, the applicant seeks to direct the respondent to grant of subsistence allowance.

5. The learned counsel would further submit that as on date, subsequent to the termination, no terminal benefits have been paid including 3 months salary as well as the provident fund, gratuity etc.

6. In reply, Mr.Krishnan Srinivasan, learned counsel on behalf of M/s. Ramasubramaniam Associates, entered appearance for the respondent and would fairly submit that the applicant's employment was terminated due to the loss of confidence and inability of the applicant to continue to discharge his functions as Chief Human Resources or for the matter of fact in any other Department. Therefore, the termination notice was sent to the



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applicant on 13.06.2017. The learned counsel would further submit that he is entitled for 3 months salary from the date of the termination which comes around a sum of Rs.5,58,810/- after deducting TDS. However, the applicant refused to admit the same.

7. Learned counsel for the respondent would submit that when the matter came up for hearing on last occasion, this Court suggested to bring and pay three months salary to which, the applicant is entitled to. Pursuant to the same, the respondent brought a demand draft for a sum of Rs.5,58,810/-, which is only the terminal benefit after deducting TDS. But the applicant refused to agree the same.

8. When this Court put a question to the learned counsel with regard to the payment towards provident fund, gratuity etc., he stated that the applicant has to approach the concerned authorities of the company by way of proper application, which will be considered by the company. Further, he would submit that no provision is available for the payment of subsistence allowance. Therefore, in the absence of such provision, the petitioner is not entitled for the same. Further, as per terms and conditions of the service, before resorting to termination of an employee, three months



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notice is required to be issued to the applicant, which the respondent has complied with by making payment of three months salary.

9. On perusal of the said notice, it is clear that the applicant's service can be terminated after three months notice. Further, in the present case, 3 months notice was not provided. On the date of termination, 3 months salary which the first respondent is liable to pay, i.e. for Rs.5,58,810/- after deducting the TDS, they brought the demand draft today. .

10. This Court is of the view that the applicant is not entitled for grant of subsistence allowance. The learned counsel for the applicant would submit that under Article 21, this Court can mould the relief when the companies are acting against the employees without following the basic principles of natural justice. However, this Court is unable to understand how the applicant is entitled for subsistence allowance, that too in the absence of any provision. The applicant has filed the suit along with the present Application in the year 2021, whereas, the termination happened in the year 2017 and he has also not explained the delay and what he was doing for the past 4 years before filing of the suit.



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11. Under these circumstances, this Court is unable to accept the submission of the applicant and as such, the petitioner is not entitled for subsistence allowance on the facts placed before this Court. While dismissing this application, this Court directs the learned counsel for the applicant to accept the demand draft for a sum of Rs.5,58,810/-, if his client wishes to accept it. Further, a liberty is also granted to the applicant to make an application along with necessary papers for the purpose of getting the provident fund and gratuity etc., to the respondent company, which case the respondent shall consider and put their approval by the concerned authority of the company so as to enable the applicant to get all the gratuity and provident fund etc., within a period of ten (10) days from the date of receipt of a copy of this order.

12. Accordingly, this Application stands dismissed.

13. Post the main suit for filing additional written statement on 03.08.2022.

20.07.2022

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