



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Thursday, the Twentieth day of January Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE M.S.RAMESH

W.M.P.No.25393 of 2018

in W.P.No.32359 of 2017

T.R.RAMESH

[PETITIONER]

Vs

1 THE MANAGEMENT OF CITI BANK N.A.,
NO.2, FIRST FLOOR, CLUB HOUSE ROAD,
CHENNAI- 600 002.

[RESPONDENTS]

2 THE SPECIAL DEPUTY COMMISSIONER OF
LABOUR, COMMISSIONERATE OF LABOUR,
COMMISSIONERATE OF LABOUR, CHENNAI-6.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order of Ad-Interim Direction, directing the First Respondent/ Writ Petitioner /Petitioner to pay to the Petitioner/ 2nd Respondent his last drawn wages of Rs.1,00,000/- per month every month from January, 2018(W.M.P.No.25393 of 2018)pending disposal of the above W.P.No.32359 of 2017.

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.NIRANJAN RAJAGOPAL for M/S.G.R.ASSOCIATES, Advocate for the petitioner and of MR.KARTHIK SESHADRI for M/S.IYER & THOMAS for 1st Respondent and of MR.C.SELVARAJ, Additional Government Pleader for 2nd Respondent, the court made the following order:-

The present petition is filed under Section 41(A) of the Tamil Nadu Shops and Establishment Act, 1947, seeking for payment of the last drawn wages together with the admissible allowances. Through the impugned order dated 01.02.2011, the order discharging the petitioner from his services was set aside and the Management was directed to reinstate the petitioner together with continuity of service and all attendant benefits.



2. Section 41(A) of the Act provides for payment of full wages last drawn by the employee, inclusive of any maintenance allowance admissible to him, subject to the condition that such an employee satisfies to the High Court that he was not gainfully employed or receiving adequate remuneration during the period of his non-employment. The employee had filed an affidavit dated 14.12.2021 stating that after his termination, he was not gainfully employed elsewhere. The Management in their counter affidavit has stated that the employee had not provided for details about his employment/association with Indic Collective and Temple Worshipers Society, where he was actively involved and has also not disclosed his Income Tax Returns. This apart, they have also stated that he is a prominent person, who is active in the public domains. The counter affidavit does not disclose that the petitioner was gainfully employed after his termination, but had rather attempted to shift the burden on the employee to prove that he was not gainfully employed.

3. The scope of Section 41(A) of the Tamil Nadu Shops and Establishment Act, 1947 dealt by this Court in various decisions, which is in pari materia with Section 17(B) of the Industrial Disputes Act, 1947, has been dealt in various decisions by this Court, whereby, it has been held that the burden of proof to establish that the terminated employee is gainfully employed would lie on the Management and what would suffice is for the employee to file an affidavit before this Court stating that he was not gainfully employed. It is also held that such payment of last drawn wages would be payable from the date on which the writ petition is preferred before this Court, in case there is no inordinate delay in challenging the order of re-instatement. In the absence of any material before this Court from the Management to substantiate that the petitioner was gainfully employed during the period of his non-employment, this Court is not satisfied with the counter averments made for refusing to pay the last drawn wages.

4. In J.K.Synthetics Ltd. Vs. K.P.Agrawal and Another reported in (2007) 2 SCC 433, the aforesaid proposition was reiterated in the following manner:

"Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may."



5. In the result, this petition is allowed. Consequently, there shall be a direction to the first respondent-Management to pay the full wages last drawn by the employee from 05.12.2017 and continue to pay the same till the disposal of the present writ petition. The Management shall pay the arrears of the last drawn salary to the employee at least within a period of four weeks from the date of receipt of a copy of this order. No costs.

-sd/-

20/01/2022

/ TRUE COPY /

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

TO

THE SPECIAL DEPUTY COMMISSIONER OF
LABOUR, COMMISSIONERATE OF LABOUR, CHENNAI-6.

C.C. to M/S.KARTHIK SESHADRI Advocate SR.NO.450/2022

Order

in

W.M.P.No.25393 of 2018

in W.P.No.32359 of 2017

Date :20/01/2022

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