



W.M.P.No.18842 of 2022 in
W.P.No.3541 of 2022

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N.MALA, J.

The petition is filed for a direction to the respondent to pay the petitioner the last drawn wages of Rs.14,800/- every month.

2. The petitioner in his affidavit in support of the application for last drawn wages under 17B of the I.D Act stated as follows:

“I respectfully submit that I am unemployed from my dismissal, namely 12.08.2016”.

3. The said averment of the petitioner was denied by the respondent through counter wherein it was specifically averred that the petitioner was the proprietor of SRRY Enterprises, having Office at No.2/70, Mettu Street, Thozhuthavur Village, Tirutani Taluk, Thiruvallur District – 631210 and doing business in labour contract.

4. According to the respondent, the said company was registered under the Department of Industries and Commerce, Government of Tamil Nadu. The company was covered under the ESI and PF Acts. The service tax registration No and GST No of the petitioner's establishment are FYGPS2618PSD001 and



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33FYGPS2618P2ZS. The respondent specifically stated that the petitioner was continuously doing business even as on date.

5. To the counter filed by the respondent, the petitioner filed rejoinder, wherein he admitted all the averments regarding labour contract business carried out on him but stated that though the business was started in his name, it was conducted by his wife Mrs. Saritha and was closed in the year 2018 due to losses. The petitioner filed documents in support of the said contention. In the rejoinder, the petitioner submitted that he was not gainfully employed on the date of the application and therefore was entitled to wages under 17B of the I.D Act.

6. The learned counsel for the respondent submitted that the petitioner had suppressed material facts and hence petition lacked bonafides. The learned counsel submitted that the petitioner was doing contract business till 2018 and it was only after the respondent pointed out the same in its counter, that the petitioner came out with an explanation in the rejoinder affidavit. The learned senior counsel therefore submitted that the petitioner approached the court with unclean hands and hence the petition deserves to be dismissed.

7. The learned counsel for the petitioner on the other hand submitted that



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the petitioner was unemployed on the date of application and therefore he was entitled to the last drawn wages. The learned counsel for the petitioner also filed documents giving the details of the petitioners business and documents showing that the business was closed as early as on 2018 itself, much prior, to the filing of the affidavit. The learned counsel therefore submitted that there was no suppression and hence petition should be allowed.

8. I have heard both the learned counsels and I have perused the materials placed on record.

9. It is undisputed that the petitioner was dismissed from service on 12.08.2016. The approval application filed by the respondent was dismissed by the Industrial Tribunal on 24.01.2022 and the same was challenged in the writ petition. The petitioner filed the present petition under Section 17-B of the I.D. Act claiming last drawn wages pending writ petition.

Section 17-B of the I.D Act reads as follows:

“Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages



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last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period of part, as the case may be”.

10. From the proviso to the above provision, it is clear that where the workman was employed and had been receiving remuneration during the period or part thereof, the workman would not be entitled to wages for the period of gainful employment. Therefore even if the date of application is taken as the relevant date for considering the petitioners entitlement for backwages, the petitioner is nevertheless bound to disclose the period of gainful employment, if any, during the said period. In the present case, the petitioner has filed the application as though he was not employed for the entire period. In my view therefore the respondent counsel is right in stating that the petitioner has suppressed material facts.

11. It is also pertinent to note here that the petitioner has not denied that



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he was conducting contract business till 2018. The explanation of the petitioner is that as the business ran into loss, it was closed. The petitioner claims that he was entitled to 17-B wages for the entire period because as on date of the application he was unemployed. In my view the issue apart from gainful employment is also whether the petitioner has approached the court with clean hands. The petitioner in all fairness should have disclosed the private business conducted by him upto 2018. The petitioner not only failed to disclose the private business but also claimed backwages from the date of dismissal till the date of application including, the period during which he was conducting business.

12. The very fact the petitioner has prayed for backwages for the entire period shows the lack of bonafides. It is no doubt true that Section 17-B is beneficial provision enacted with an avowed object of alleviating the workman from financial hardship caused due to the delay in implementing the award. At the same time it is to be remembered that the said provision cannot be exploited so as to nullify its avowed object. It is trite that those who seek equity should do equity. The proviso of Section 17-B clearly states that for the period of gainful employment the workman would not be entitled to wages provided the wages



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were adequate. Hence it was incumbent on the petitioner to have disclosed the fact and left it to court to decide on merits.

13. I am fortified in my view that the petitioner should be non suited for approaching the court with unclean hands by the judgment of the Hon'ble Supreme Court in the case of ***B.Srinivasa Reddy vs Karnataka Urban Water Supply & Drainage Board Employees Association*** reported in ***(2006) 11 SCC 731 (2)***, the following paragraphs are relevant.

“40. In the instant case, the Employees' Association approached the High Court with unclean hands. The employees who approach the Court for such relief must come with frank and full disclosure of facts. If they fail to do so and suppress material facts, their application is liable to be dismissed.

41. The Constitution Bench of this Court in Naraindas -vs- Govt. of M.P held that if a wrong or misleading statement is deliberately and wilfully made by a party to a litigation with a view to obtain a favourable order, it would prejudice or interfere with the due course of judicial proceeding and this amount to contempt of court.

42. ... The Court cannot grant any relief to a person who comes to the Court with unclean hands and with mala fide intention/motive.

So also in the case of ***K.D.Sharma vs Steel Authority of India Limited and***



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Others reported in **(2008) 12 SCC 481**, it was held as follows:

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“38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in Kensington Income Tax Commrs. is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a



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distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.”

In the light of the above Judgments I find that petition lacks bonafides and hence same deserve to be dismissed. Accordingly, WMP is dismissed.

26.03.2024

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