W.M.P.Nos.18093 of 2023
and 31034 of 2022
in
W.P.No.22244 of 2022

N.MALA,J.

The petitioner joined the respondent Tata Consultancy Service Limited as Assistant System Engineer on 10.08.2016 and was later promoted as Assistant Consultant on 01.04.2013. The petitioner was terminated from service on 02.01.2015. The petitioner therefore raised the dispute in I.D.No.34 of 2016. The Labour Court allowed the I.D by setting aside the termination order and by directing the respondent herein to reinstate the petitioner with continuity of service from the date of termination of service till the date of his reinstatement.

2. The respondent therefore filed the above writ petition challenging the award passed by the Labour Court. Interim stay was ordered on condition of deposit of the back wages to the credit of I.D.No.34 of 2016. The conditional order was also complied with and an amount of Rs.41,57,120/- was deposited.

3.The petitioner has now come forward with this petition, claiming 17-B wages and also for withdrawal of the amount deposited by the respondent management. The petitioner in his sworn affidavit stated that he was not gainfully employed and was eking out his livelihood by raising loans from friends and relatives. It was further stated that due to petitioner's non-employment, he along with his family were starving without income. It is pertinent to note that the petitioner in more than one place in the affidavit stated that he was out of employment since the date of his termination and inspite of his best efforts, he was unable to get employment.

4. The respondent management filed counter denying the contention of the petitioner that he was not gainfully employed and in Para 9 and 10 of the counter affidavit, it was specifically stated that the petitioner had made false statements before this Court as well as the Labour Court that he was not gainfully employed. The respondent management in the counter stated that the petitioner left the services of the respondent on 06.02.2015 and joined the XML infotech as Software consultant for Banking Domain in the month of March 2015. It is further stated that the petitioner was still on the rolls of the company as per the records provided in the portals. The respondent management therefore submitted that the petitioner was gainfully employed and that he approached the Court with unclean hands.

5. The petitioner filed rejoinder to the counter filed by the respondent management admitting that XML Infotech was his own venture and that it did not last for more than six months. According to the petitioner, it was only a disastrous entrepreneurial adventure. The petitioner also admitted that he was freelancer, teaching Python and was earning Rs.2,500 to Rs.5,000/- per month. The petitioner denied that he committed fraud, misrepresentation etc and further stated that the allegations were made to arm twist the petitioner. The petitioner relied on the judgment of the Hon'ble Supreme Court in the case of ***Rajinder Kumar Kindra -vs- Delhi Administration*** reported in ***(1984) 4 SCC 635*** in support of his contention that employment undertaken for subsistence only, cannot strictly be called as gainful employment.

6. The learned counsel for the petitioner relied on the affidavit as well as the rejoinder filed and submitted that there was no suppression of facts as contended by the learned counsel for the respondent and therefore the petition ought to be allowed.

7. The learned counsel for the respondent on the other hand submits that the petitioner ought to have divulged facts narrated in the rejoinder to the counter affidavit, even in his original affidavit in support of the 17-B

application. The filing of the rejoinder will not wipe out the suppression of facts made in the original affidavit.

8. Heard both counsels and perused the materials placed on record.

9. It is seen from the above narration of the facts that the petitioner did not reveal that he had entered into the venture namely XML Infotech. It was also only after the respondent filed the counter, bringing out the said fact, that the petitioner filed rejoinder that the venture was his own and that it did not last for more than six months. The respondent in the counter specifically stated that the name of the petitioner is reflected in the rolls of the XML Infotech, even today. But the petitioner has not denied the same. Even now, the petitioner has not come with true facts. A person who approaches the Court with unclean hands cannot be entertained. Those who seek equity should do equity. The issue is not only whether the employment of the petitioner is for basic sustenance or not, but also whether the petitioner has approached the Court with clean hands. It is true that the 17-B is a beneficial provision with the avowed object of alleviating the workman from hardship caused due to the delay in implementing the award. At the same time, it should be remembered that it does not give license to the workman to suppress material facts and

approach the Court with unclean hands. I am of the view that the petitioner having suppressed material facts in the affidavit in support of the 17-B petition, the petition does not deserve merit. Useful reference in this regard is made to the judgment in the case of ***B.Srinivasa Reddy -vs- Karnataka Urban Water Supply & Drainage Board Employees Association*** reported in ***(2006) 11 Supreme Court Cases 731 (I),*** 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.*

10. So also in the case of ***K.D.Sharma -vs- SAIL and others***, the Hon'ble Supreme Court held as follows:

> *28. 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".

29. If the primary object as highlighted in Kensington Income Tax Commissioners 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, maneuvering 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 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.

11. It is pertinent to note that the Hon'ble Supreme Court states that the Writ Court would be failing in its duty if the petition is not rejected on the

ground of approaching Court with unclean hands.

12. I am therefore of the view that the petition cannot be entertained and hence it is rejected.

Post the case for final disposal on 15.04.2024

20.02.2024

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