



WMP NO. 11853 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-01-2025

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THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

WMP NO. 11853 of 2024

IN

WP NO. 21818 OF 2023

E.Jayasimhan,
S/o.C.D.Ethirajan, No. 5/93 , Main Rod, Cowl Bazar, Chennai-600
074

Petitioner(s)

Vs

Joint Commissioner Of Labour(minimum Wages),
Appellate Authority Under The Tamil Nadu Shops And
Establishment Act, 1947, Dms Compound, Teynampet, Chennai-
600 006. and another

Respondent(s)

For Petitioner: Mr.Balan Haridas

For Respondents: Mr.Sanjay Mohan Assisted by Mr.R.Jayaprakash

ORDER

This application is filed for the payment of the last drawn wages drawn by the workman.

2. Admittedly, the writ petition is filed as against the award ordering reinstatement.

Therefore, the workman would be entitled for payment of 17B wages subject to the

only condition that he is not otherwise gainfully employed. The workman has filed an



affidavit stating that he is not otherwise gainfully employed. In the counter a

filed by the management, two points are raised. Firstly, it is stated that in a recorded

telephone conversation, the workman is admitting that he is earning more than what he

used to earn when he was in employment. The context in which it is spoken and the

manner in which it is recorded cannot be gone into and that cannot be conclusive proof

that the workman is in gainful employment. Therefore, I reject the said submission

made on behalf of the management. The second ground raised is that the workman is

enrolled as an Advocate in the year 2015. The said fact is not denied by Workman.

3. The argument of *Mr. Balan Haridas*, the learned counsel appearing on behalf of the

workman is that even in the legal profession, if the workman earns more than what he

used to earn in employment, only then it can be seen as gainful employment. I am

unable to accept the said argument of the learned counsel for the workmen. Being an

Advocate is a full-time profession and the Rules of the Bar Council of India do not

permit a person to be both a workman as well as an Advocate. Further, under Rule 43

of Section IV – A, Chapter II, Part VI of the Rules, an advocate has to suspend practice

on employment. Once he is an advocate and has not suspended the practice, it cannot

be said that he is not in gainful employment. Therefore, I do not agree with the

argument of the learned counsel for the workman that the amount of his income should



be taken into account. The Court cannot perpetuate the illegality indire

permitting an advocate to be granted the last drawn wages while he is practicing as a member of the bar.

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4. It is another thing that if the award of the workman is confirmed, then he can decide to give up his practice and go back to the management for work. The same ground cannot be taken into account for the purpose of deciding the main issue, as the workman can still choose to suspend his enrolment and go back to his work in the event of succeeding in the main writ petition. This order will not preclude the workman by taking a chance by suspending his practice and then moving fresh application for 17B wages, if so advised.

5. Accordingly, W.M.P.No.11583 of 2024 is dismissed.

6. Considering the urgency expressed by the learned counsel for the workman, post the main W.P.No.21818 of 2023 for final hearing on 13.02.2025.

30-01-2025

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