



IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

Friday, the 18th day of July 2025 / 27th Ashadha, 1947

IA.NO.1/2024 IN WP(C) NO. 10576 OF 2024

PETITIONER:

SMITHA FRANCIS ALIAS SMITHA AJAY, VILLA NO.6, MYSTIC BELLS,
KANIAMPUZHA ROAD, EROOR P.O., VYTILLA, KOCHI, PIN - 682036

RESPONDENTS:

1. SHWAS HOMES PRIVATE LIMITED, REGISTERED OFFICE, GROUND FLOOR, SHWAS MYSTIC HEIGHTS 1, KANIYAMPUZHA ROAD, EROOR P.O., KOCHI, REPRESENTED BY ITS DIRECTOR, SREENI PARAMESWARAN, AGED 48 YEARS, SON OF M.G.PARAMESWARAN NAIR, VILLA NO.1, MYSTIC BELLS, KANIYAMPUZHA ROAD, EROOR P.O., TRIPUNITHURA 682306, PIN - 682036
2. THE PRESIDING OFFICER, LABOUR COURT, ERNAKULAM, KOCHI, PIN - 682034

Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to direct the 1st Respondent herein to pay the petitioner herein, wages at the rate of Rs.4,14, 000/- (Four lakhs and fourteen thousand) being the benefit entitled to me under section 17 B of the I.D. Act, 1947 for the period from 04-05-2022, the date of effect of the order for reinstatement to 31-03- 2024 and to continue to pay Rs.18,000/- per month, during the pendency of the above Writ Petition.

This Application coming on for orders upon perusing the application and the affidavit filed in support thereof, and upon hearing the arguments of M/S. M.M.FATHIMA JALEENA, K.A.HAZAN, V.J.JAMES, K.P.WILSON & RAMESH KUMAR K. Advocates for petitioner, M/S. B.ASHOK SHENOY, P.S.GIREESH, SALIH P.A., ARJUN R NAIK, THEJALAKSHMI R.S. & UMASANKER U.U., Advocates for R1 , the court passed the following:



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[CR]

S.MANU, J.

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Dated this the 18th day of July, 2025

ORDER

This interim application has been filed by the 2nd respondent in the writ petition under Section 17B of the Industrial Disputes Act.

2. Petitioner in this I.A. is the workman in I.D.No.14/2017 of the Labour Court, Ernakulam. Denial of employment by the writ petitioner was the issue. On 07.03.2022, the Labour Court passed an award finding that the denial of employment was unjustified and illegal. Petitioner was directed to be reinstated with continuity of service. 50% of backwages with 7% interest from 17.09.2011 was also awarded.

3. The writ petitioner management did not honour the award. Petitioner filed C.P.No.77/2022 under Section 33C(2) of



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the Industrial Disputes Act before the Labour Court. Later, she filed C.P.No.51/2023 which was allowed by order dated 29.11.2023. The Labour Court held that the petitioner is entitled to recover an amount of Rs.4,06,619/- from the management for the period from 01.04.2022 to 31.07.2023.

4. In the affidavit accompanying this I.A., the petitioner has stated that she has been out of employment since 17.09.2011. She stated that she could not find any employment and had no means of livelihood from any other job, gainfully or otherwise

5. The writ petitioner filed counter affidavit in this I.A. The contention in the counter affidavit mainly is that the petitioner started her own establishment, a women's cloths shop and designer boutique under the name and style "Marlin Wardrobe" at Eroor in 2015. Copy of the license dated 26.05.2022 issued by the Tripunithura Municipality for the establishment and some other documents have been produced along with the counter affidavit. The writ petitioner contends



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that the petitioner in the above IA is getting profit of more than Rs.1,00,000/- per month and hence she is not entitled for the benefit under Section 17B. The writ petitioner later filed an additional counter affidavit in which it has been stated that in addition to the above mentioned establishment, the petitioner was running another establishment under the name and style 'Saga, The Craft People'. It is contended that the petitioner is earning profit of more than Rs.5,00,000/- from the said establishment. A copy of the consent to operate issued to the factory by the Kerala State Pollution Control Board and some other documents have been produced along with the additional counter affidavit.

6. The petitioner filed reply affidavit refuting the contentions in the counter affidavit and the additional counter affidavit. Petitioner states in the reply affidavit that the business of 'Saga, The Craft People' was run by the family and not by her alone. It being a family concern, the profit of the said concern cannot be considered as her earning. She further



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states that 'Marlin's Wardrobe' is a tailoring establishment started in 2018 and on account of continuous loss it is in the verge of closure. Crux of the contentions raised in the reply affidavit is that though two business establishments were started, the petitioner is not earning sufficient income and hence the same cannot be considered as a reason for denying the relief under Section 17B of the Industrial Disputes Act.

7. Learned counsel appearing for the workman relied on various judgments of the Hon'ble Supreme Court, this Court as well as of the Delhi High Court. He relied on the following judgments:-

1. **Jayaraman v. Quilon Gas Service**
[1995 SCC OnLine Ker 358].
2. **Regional Authority, Dena Bank and Ors v. Ghanshyam** [(2001) 5 SCC 169].
3. **Birdhi Chand Naunag Ram Jain v. P.O., Labour Court No.IV and Ors.**
[2003 SCC OnLine Del 1188].
4. **Lourdes Hospital v. State of Kerala.**
[2022 SCC OnLine Ker 1025].



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**5. Surender kumar v. North Delhi
Municipal corporation** [2022 SCC OnLine
Del 3451].

8. He contended that the turn over of the establishments allegedly run by the petitioner is very less and the profit was not sufficient. The business concerns were run by the family and not by the petitioner alone. Therefore, the income derived from the business cannot be considered as the personal income of the petitioner. He hence submitted that the petitioner is entitled for relief under Section 17B. The learned counsel further contended that the said relief can be denied only if the workman was gainfully employed elsewhere. He pointed out that the writ petitioner-management has no case that the petitioner workman is employed under any establishment. He submitted that the language of the provision of Section 17B is very clear and the benefit can be denied to the workman only if he or she is employed elsewhere gainfully and not in a case in which the workman is self-employed.



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9. The learned counsel appearing for the writ petitioner management on the other hand contended that the petitioner workman is running two business establishments profitably and is earning much more than her last drawn wages. The learned counsel contended that the object of providing relief under Section 17B is only to enable the workman to receive the last drawn wages for his or her subsistence. When the workman is earning handsome amounts otherwise by running own business the relief under Section 17B need not be extended. The learned counsel relied on the following judgments of the Hon'ble Supreme Court:-

1. **North-East Karnataka Road Transport Corporation v. M. Nagangouda.** [(2007) 10 SCC 765].
2. **Kamala Nehru Memorial Hospital v. Vinod Kumar** [(2006)1 SCC 498].

He also relied on an unreported order of a learned Single Judge of this Court in I.A.No.1 of 2024 in W.P.(C)No.25881 of 2021.



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10. Section 17B of the Industrial Disputes Act reads as follows:-

"17B. Payment of full wages to workman pending proceedings in higher Courts.

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 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



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shall be payable under this section for such
period or part, as the case may be."

[Emphasis added]

11. It is to be noted that going by the plain language of the provisions of Section 17B, the argument advanced by the learned counsel for the petitioner may seem to be attractive. Reference in the Section is about employment in any establishment. In the proviso, it has been provided that if it is proved that the workman had been employed and had been receiving adequate remuneration the court shall not order to pay wages under this Section. Therefore, the wages under Section 17B can be denied when the workman is employed and had been receiving adequate remuneration. Provisions of the Section has been interpreted by different High Courts in various cases. Strict view that the benefit under Section 17B can be denied only if the workman is employed in another establishment and the word 'employment' can mean only that 'employed by someone else' has also been adopted by some of the High Courts. In **Lourdes**



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Hospital (*supra*) Division Bench of this Court left the issue open by observing as follows in paragraph 20 of the judgment:-

"20. After hearing both sides, we are of the view that the factual scenario of the present case is entirely different from the case decided by the learned Single Judge of the Delhi High Court in NNS Online Pvt. Ltd.'s case *supra*. The gainful employment pleaded in NNS Online Pvt. Ltd.'s case *supra* was the claimed self employment of the workman who was shown to be running a highly successful newspaper establishment, etc. **Hence, there is no necessity to decide as to whether the concept of gainful employment by way of self employment, would also partake within the ingredients of S.17-B of the Industrial Disputes Act. The said issue does not arise for consideration in the facts and circumstances of the instant case.**"

[Emphasis added]

12. In the unreported order, in I.A.No.1 of 2024 in W.P.(C)No.25881 of 2021, pointed out by the learned counsel for the petitioner a learned Single Judge of this Court dismissed



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an I.A. filed under Section 17B for the reason that the workman was engaged in a profitable business.

13. Given the facts of the current case, it is required to determine whether self employment should be regarded as being within the scope of the expression employment in Section 17B of the I.D Act. Reference to law laid down by the Hon'ble Supreme Court in **North-East Karnataka Road Transport Corporation** (*supra*) is beneficial in this regard. In paragraph 17 of the judgment the Hon'ble Supreme Court held thus:-

"17. On the said question, we are unable to accept the reasoning of the Labour Court that the income received by the respondent from agricultural pursuits could not be equated with income from gainful employment in any establishment. In our view, "gainful employment" would also include self-employment where from income is generated. Income either from employment in an establishment or from self-employment merely differentiates the sources from which income is generated, the end use being the same. Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the



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Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in "gainful employment".

14. The Hon'ble Apex Court was considering the issue of back wages and not payment of last drawn wages under S.17B in the said case. Nonetheless, the Apex Court considered self employment also as employment for the purpose of deciding back wages liable to be granted. In view of the categorical supposition of the Hon'ble Supreme Court as above, in an analogous context, I am of the considered view that the expression "employment" in S.17B must be held to include self-employment also. However, without doubt the self employment should be adequately remunerating. If not, the employer shall be liable to pay last drawn wages under S.17B. If the workman is proved to have been earning sufficient income through self employment, a direction under S.17B may not be required to ensure sufficient pecuniary resource for his living. It must be



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kept in mind in this context that the amounts paid by employers under S.17B are not recoverable from the employees, whatsoever be the outcome of the main proceedings and therefore granting the benefit under S.17 B, heedless of the real requirements of the workman will be inequitable. However, as it is well settled, involving in some income generating activity including self employment, to make both ends meet cannot dis-entitle the workman from claiming the relief under S.17B. The real objective of incorporating S.17B is that the workman shall not be left high and dry despite securing an award in his favour, directing reinstatement. As held by the Hon'ble Apex Court in **Dena Bank V. Kiritikumar K Patel** [(1999) 2 SCC 106] payment required to be made by the employer under S.17 B is in the nature of subsistence allowance.

15. Having concluded that self employment would also fall within the ambit of the expression employment, the next issue to be considered is whether the petitioner- workman has sufficient income. Documents produced and submissions made



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during the course of hearing show that there is adequate income generated by the petitioner from her concerns, definitely more than the last drawn wages. Though the learned counsel for her contended that the petitioner – workman is not enjoying the whole income and it is a family concern, the said contention is not properly established.

16. In the case at hand the petitioner did not reveal her involvement in the business concerns in her affidavit filed in support of the I.A. She asserted that she is not employed anywhere after losing her job under the writ petitioner management. She further asserted that she has no means of livelihood from any other job. This assertion by the petitioner was evidently false. She admitted her involvement in two business concerns in the reply affidavit filed subsequently. As a matter of propriety and fairness she should have disclosed the said aspect also in the affidavit filed in support of the I.A. Even if her case that the involvement in business does not provide her sufficient income is assumed as correct, the said contention



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ought to have been raised in the affidavit filed in support of the I.A. and not after the writ petitioner management refuted her averments by filing counter affidavit. This conduct of the petitioner cannot be ignored. Any litigant approaching the court, including a workman invoking the powers under S.17B shall disclose every relevant fact pertaining to the issue involved in pleadings and failure to do so can be considered only as suppression. Being selective in disclosing the facts cannot be approved even in an application under S.17B of the I.D Act.

In conclusion, I find that the proper course to be followed in this case is early hearing of the writ petition. The instant application under S.17B is only to be rejected. Ordered accordingly.

Sd/-

**S.MANU
JUDGE**

skj

**APPENDIX OF WP(C) 10576/2024**

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Exhibit P1	TRUE COPY OF APPOINTMENT LETTER DATED 7.1.2010 ISSUED BY PETITIONER
Exhibit P2	TRUE COPY OF LETTER DATED 7.4.2009 ISSUED BY PETITIONER TO 2ND RESPONDENT
Exhibit P3	TRUE COPY OF LETTER DATED 4.5.2011 ISSUED BY PETITIONER TO 2ND RESPONDENT
Exhibit P4	TRUE COPY OF OFFICE CIRCULAR NO.SH/CIR/21/09-10 DATED 6.4.2010 ISSUED BY PETITIONER
Exhibit P5	TRUE COPY OF RESIGNATION LETTER DATED 28.10.2010 SUBMITTED BY MARIAMMA THOMAS TO PETITIONER
Exhibit P6	TRUE COPY OF RELIEVING ORDER DATED 1.11.2010 ISSUED BY PETITIONER TO MARIAMMA THOMAS
Exhibit P7	TRUE COPY OF SERVICE CERTIFICATE DATED 1.11.2010 ISSUED BY 2ND RESPONDENT TO MARIAMMA THOMAS
Exhibit P8	TRUE COPY OF RESIGNATION LETTER DATED 20.4.2011 SUBMITTED BY RESHMA KRISHNADAS TO PETITIONER
Exhibit P9	TRUE COPY OF RESIGNATION LETTER DATED 23.4.2011 SUBMITTED BY REMYA K.R.TO PETITIONER
Exhibit P10	TRUE COPY OF RESIGNATION LETTER DATED 27.4.2011 SUBMITTED BY JOPHINCE JOSEPH TO PETITIONER
Exhibit P11	TRUE COPY OF MEMO ISSUED BY PETITIONER TO 2ND RESPONDENT, DATED 7.10.2009, WHICH IS ACTUALLY 7.10.2011
Exhibit P12	TRUE COPY OF EXPLANATION DATED 15.10.2011 SUBMITTED BY 2ND RESPONDENT TO PETITIONER
Exhibit P13	TRUE COPY OF EMAIL DATED 16.12.2011 SENT BY 2ND RESPONDENT TO PETITIONER WITH TRAILING EMAIL DATED 14.12.2011 OF PETITIONER TO 2ND RESPONDENT
Exhibit P14	TRUE COPY OF ENQUIRY REPORT DATED 28.3.2015 PASSED BY ENQUIRY OFFICER
Exhibit P15	TRUE COPY OF ORDER DATED 12.5.2015 ISSUED BY PETITIONER TO 2ND RESPONDENT
Exhibit P16	TRUE COPY OF APPLICATION DATED 7.3.2017 FILED BY 2ND RESPONDENT BEFORE 1ST RESPONDENT AS ID NO.14 OF 2017
Exhibit P17	TRUE COPY OF WRITTEN STATEMENT DATED 28.6.2017 FILED BY PETITIONER BEFORE 1ST RESPONDENT IN ID NO.14 OF 2017
Exhibit P18	TRUE COPY OF REPLY STATEMENT DATED 23.10.2017 FILED BY 2ND RESPONDENT BEFORE 1ST RESPONDENT IN ID NO.14 OF 2017
Exhibit P19	TRUE COPY OF PROOF AFFIDAVIT OF 2ND RESPONDENT DATED 22.10.2018 FILED IN LIEU OF HER EXAMINATION IN CHIEF ALONGWITH HER TESTIMONY IN CROSS EXAMINATION BEFORE 1ST RESPONDENT WITH ITS READABLE COPY
Exhibit P20	TRUE COPY OF PRELIMINARY ORDER DATED 12.3.2019 IN ID 14 OF.2017 PASSED BY 1ST RESPONDENT
Exhibit P21	: TRUE COPY OF PRELIMINARY ORDER DATED 23.5.2021 IN ID 14 OF 2017 PASSED BY 1ST RESPONDENT
Exhibit P22	TRUE COPY OF JUDGMENT DATED 2.11.2021 BEFORE THIS HON'BLE COURT IN W.P.(C) NO.23887 OF 2021
Exhibit P23	TRUE COPY OF JUDGMENT DATED 11.7.2022 BEFORE THIS HON'BLE COURT IN W.A.NO.701 OF 2022



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Exhibit P24	TRUE COPY OF AWARD DATED 7.3.2022 PASSED BY 1ST RESPONDENT IN ID NO. 14 OF 2017
Exhibit P25	TRUE COPY OF ADDITIONAL PROOF AFFIDAVIT DATED 20.9.2021 SWORN TO BY 2ND RESPONDENT AND FILED BEFORE 1ST RESPONDENT IN ID NO.14 OF 2017
Exhibit P26	TRUE COPY OF EMAIL DATED 29.9.2011 OF PETITIONER'S CUSTOMER, MANOJ KUMAR SENT TO PETITIONER
Exhibit P27	TRUE COPY OF EMAIL DATED 29.9.2011 OF PETITIONER'S CUSTOMER, TENSION ABRAHAM SENT TO PETITIONER
Exhibit P28	TRUE COPY OF DEPOSITION DATED 16.11.2021 OF 2ND RESPONDENT BEFORE 1ST RESPONDENT IN ID 14 OF 2017
Exhibit P29	True print out of Profile of the establishment, "Marlin Wardrobe" as publicised by applicant/2nd respondent
Exhibit P30	True print out of Facebook profile of the establishment "Marlin Wardrobe" publicised by applicant/2nd respondent
Exhibit P31	True copy of License No.130194012200192 dated 26.5.2022 issued by Tripunithura Municipality for the establishment "Marlin Wardrobe" in favour of applicant/2nd respondent
Exhibit P32	True copy of License Number 130194012302029 dated 02.06.2023 issued to applicant/2nd respondent by Tripunithura Municipality to run the establishment, "Saga, The Craft People"
Exhibit P33	True print out of Home Page taken from the official website of establishment, "Saga, The Craft People", namely, www.sagatcp.com
Exhibit P34	True print out of 'About us' page taken from the official website of establishment, "Saga, The Craft People", namely, www.sagatcp.com
Exhibit P35	True copy of Consent to Operate No.PCB/EKM/DO-1/OA-168/18 dated 4.8.2018 issued by Kerala State Pollution Control Board to applicant/2nd respondent
Exhibit R2(a)	A TRUE COPY OF THE LETTER DATED 11-05-2022 SENT TO THE MANAGEMENT/ WRIT PETITIONER BY THE APPLICANT/ 2ND RESPONDENT.
Exhibit R2(b)	A TRUE COPY OF THE NOTICE DATED 14-07-2022 DEMANDING THE PAYMENT OF THE BACK WAGES AND OTHER BENEFITS FOR THE PERIOD FROM 17-09-2011 TO 31-03-2022 BY THE APPLICANT/ 2ND RESPONDENT.
Exhibit R2(c)	A TRUE COPY OF THE CLAIM PETITION C. P. 77/2022 DATED 29-11-2022 BY THE APPLICANT/ 2ND RESPONDENT.
Exhibit R2(d)	A TRUE COPY OF THE LETTER DATED 31- 01-2023 SENT TO THE MANAGEMENT COMPANY AND OTHERS
Exhibit R2(e)	A TRUE COPY OF THE ORDER NO. C.P 51/2023 DATED 29-11-2023 OF THE LEARNED LABOUR COURT.
Exhibit R2 (k)	True copy of the profit and loss account of M/s Marlin's Wardrobe for the year 2021-22.
Exhibit R2 (l)	True copy of the profit and loss account of M/s Marlin's Wardrobe for the year 2022-23.
Exhibit R2 (m)	True copy of the profit and loss account of M/s Marlin's Wardrobe for the year 2023-24.



Exhibit R2 (o)	A true copy of the partnership deed dated 30-05-2019
Exhibit R2 (n)	A true copy of the letter dated 28-02-2023 submitted to the Secreary, Thripunithura Municipality along with receipt.
Exhibit R2 (f)	True copy of the Degree Certificate No.47211607/47211408/ 4721555 1002 dated 03-09-2021 issued by the Kerala University.
Exhibit R2 (h)	True copy of the Audited Balance Sheet and Profit and loss account of the establishment " Saga" for the year 2020-21.
Exhibit R2 (i)	True copy of the Audited Balance Sheet and Profit and loss account of the establishment " Saga" for the year 2021-22.
Exhibit R2 (g)	True copy of the Post Graduate Degree Certificate No. 0135160 issued to Ajai Raghu from the Cochin University of Science and Technology dated 24.05.2023.
Exhibit R2 (j)	True copy of the Audited Balance Sheet and Profit and loss account of the establishment " Saga" for the year 2022-23.

