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W.P.(MD)No.10557 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.10557 of 2017

and

W.M.P.(MD)Nos.8092 and 11845 of 2017

C.Jeyakodi

... Petitioner

vs.

1.The Commissioner for Employees'
Compensation,
(The Deputy Commissioner of Labour),
Madurai.

2.Gomathi

3.Karuthaiya

4.Anna Kili

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Aa Thi.Mu4/7261/2016, dated 28.02.2017 and to quash the same as illegal and consequently, to direct



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the 1st respondent to take the returned and unnumbered interlocutory application in W.C.No.47 of 2015 on its file and to dispose the same on merits and in accordance with law within the period that may be stipulated by his Court.

For Petitioner	: Mr.M.Jerin Mathew
For R1	: Mr.S.R.A.Ramachandran Additional Government Pleader
For R2 to 4	: Mr.P.Theenavan

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order, dated 28.02.2017 and consequently to direct the 1st respondent to take the returned and unnumbered interlocutory application in W.C.No.47 of 2015 on its file and to dispose the same on merits and in accordance with law within the period that may be stipulated by his Court.



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subsequently did not participate in the enquiry proceedings. The said fact is evident from the order of the authority in paragraph 4 which is extracted hereunder:

“4) எதிர்மனுதாரர் தரப்பில் பதிலுரை மட்டும் தாக்கல் செய்யப்பட்டு ஆஜராகாமல் இருந்துள்ளார். எதிர்மனுதாரர் தரப்பு சாட்சியத்திற்காக பல்வேறு வாய்ப்புக்கள் அளிக்கப்பட்டும் சாட்சியம் அளிக்கப்படாமல் இருந்துள்ளதால் 14.09.2016ம் தேதியன்று எதிர்மனுதாரர் தரப்பு சாட்சியம் முடிக்கப்பட்டது.”

Hence, the claim of the writ petitioner is that the order is an ex-parte order and hence she filed a petition to reopen the case and the same was returned. Aggrieved over the same, the present writ petition is filed.

4. The main contention of the petitioner is that the Commissioner ought to have granted opportunity to the writ petitioner to file evidence and also to depose before the authority. But the impugned order specifically records that the writ petitioner did not appear before the authority when the opportunity was granted to file the evidence and



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depose before the authority and the same is deliberately.

5. The learned Counsel appearing for respondents 2 to 4 vehemently opposed stating that it is not an ex-parte order. The petitioner had participated in the enquiry proceedings but only when their opportunity arises to depose, he deliberately did not appear. Hence this cannot be construed as an ex-parte order but an order passed on merits.

6. After hearing the rival submissions, it is seen the writ petitioner has not submitted any evidence before the authority, it was considered based on the counter affidavit and based on the evidence deposed by the second respondent alone. Any enquiry proceedings ought to be conducted based on the evidence submitted by both the parties.



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7. Admittedly, in the present case, the petitioner did not submit any evidence and did not appear before the authority. Hence, it has to be treated as an ex-parte order. Therefore, the Commissioner ought to have granted one more opportunity to the writ petitioner. When the writ petitioner had filed an application to reopen the petition the authority ought to have considered the same but the authority has simply returned the petition.

8. The next contention of the respondent is that the petitioner in order to avoid to deposit the amount has not filed Civil Miscellaneous Appeal. Hence, under Article 226, this present writ may not be entertained. However, the petitioner refuted and submitted since the authority had not granted effective opportunity to the petitioner, since it is violating the principles of natural justice, hence writ petition is filed.



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9. This writ petition is filed in the year 2017 and it is pending for more than 7 years. The family of the deceased has not received any amount until now. Therefore, this Court proceeds further because the deceased family is still suffering. This Court cannot allow the party to file a Civil Miscellaneous Appeal and make the deceased family to suffer further. Therefore, to balance the rights of the parties, this Court is directing the petitioner to pay Rs.10,00,000/- (Rupees Ten Lakh only) as a full and final settlement to the deceased family and the petitioner shall pay the same within a period of eight weeks from the date of receipt of a copy of this order. The private respondents shall not demand any interest further.

10. With the above said observation, the writ petition is allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
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To

The Commissioner for Employees'
Compensation,
(The Deputy Commissioner of Labour),
Madurai.



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S.SRIMATHY, J

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