

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2015

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAI SWAMY

W.P.No.20401 of 2011 &

M.P.No. 1 of 2013

M/s.Madhura coats Private Limited,
Papavinasam Mills Post,
Vikramasingapuram,
Ambasamudram Taluk

.. Petitioner

v.

1.The Presiding Officer,
Industrial Tribunal,
Chennai - 600 104.

2.T. Paul

3.M.Chandrasekar

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records from the file of the first respondent in Misc. Application No.116 of 2007 in Complaint No.1 of 2006, Misc. Application No.117 of 2007 in Complaint No.2 of 2006, Misc.Application No.145 of 2007 in Unnumbered A.P.No.-----2007 and in Misc. Application No.146 of 2007 in Unnumbered A.P.No.-----2007 and to quash the common order passed therein dated 15.9.2010.

For Petitioner : Mr.S.Jayaraman

For Respondents : Mr.G.Sundaram - for R2

Mr.S.Silambanan, Sr. Counsel
for M/s.S.Kalimuthu and Babu Barveery
for M/s.Profexs Asso. - for R3

ORDER

The petitioner mill has filed the above writ petition to issue a Writ of Certiorari to call for the records of the first respondent in the Miscellaneous Application No.116 of 2007 in Complaint No.1 of 2006, Miscellaneous Application No.117 of 2007 in Complaint No.2 of 2006, Miscellaneous Application No.145 of 2007 in Unnumbered A.P.No.---/2007 and in Miscellaneous Application No.146 of 2007 in Unnumbered A.P. No.---/2007 and to quash the common order passed by the first respondent-Tribunal.

also joined as learner in the petitioner mill and he was confirmed as substitute on 1.10.1993 under Ticket No.12132. According to the petitioner, since both the respondents 2 and 3 were absenting themselves regularly without prior information and that they were availing medical leave frequently without genuine reasons, a show cause notice was issued on 19.7.2005. The respondents 2 and 3 have submitted their explanation to the show cause notice. Thereafter, a termination order was passed against the respondents 2 and 3 on 27.7.2005 removing their names from the muster roll of the petitioner mill from 27.7.2005. The respondents 2 and 3 were concerned workmen in Industrial Dispute in I.D.No.32 of 2001. According to the petitioner mill, they had complied with the provisions of section 33(2)(b) of the Industrial Disputes Act, Thereafter, Approval Petitions filed by the petitioner before the Tribunal were also returned several times for compliance. Thereafter on 22.2.2006, the same was returned as not maintainable, since the the complaint filed by the respondents 2 and 3 were already numbered. The respondents 2 and 3 have filed Miscellaneous Application Nos.116 and 117 of 2007 to dismiss the Complaint Nos.1 and 2 of 2006 and Miscellaneous Application Nos.145 and 146 of 2007 in unnumbered Complaint Nos..../2007 to accept the approval petitions on file. The petitioner mill also filed two verified petitions for condoning the delay of 512 days in representing the approval petitions. The said miscellaneous applications were opposed by the respondents 2 and 3. Thereafter, the first respondent-Tribunal dismissed the applications filed by the petitioner mill. Aggrieved over the same, the petitioner mill has filed the above writ petition.

3. Heard Mr.S.Jayaraman, learned counsel appearing for the petitioner, Mr.G.Sundaram, learned counsel appearing for the second respondent and Mr.S.Silambanan, learned Senior Counsel appearing for the third respondent.

4. The main disputes relates to the revision of wages and the said dispute was disposed of in the year 2007 itself. The Mill filed Approval Petition on 16.8.2005 and the same was returned for rectifying certain defects. However, the Mill did not rectify the defects and represent it till 3.8.2007. Hence, there is a delay of 512 days in representing the Approval Petition. In the interregnum, on 27.7.2005, the respondents 2 and 3, whose services were terminated, filed a complaint on 6.10.2005 and the said complaint was taken on file by the tribunal on the basis that on the said date there was no approval petition pending on the file of the Tribunal. The Mill filed M.A.Nos. 145 and 146 of 2007 representing the approval petitions. The Mill also filed M.A.Nos. 116 and 117 of 2007 with a request to reject the complaint filed by the workmen on the ground that the complaint is not maintainable having been filed after the filing of the approval petitions.

5. It is not in dispute that the workers were dismissed from service on 27.07.2005 and the management sent an application under section 33(2)(b) of the I.D. Act for approval to the Industrial Tribunal on 9.8.2005. Hence, there is a delay of 12 days in filing the approval petitions. The said petitions were returned for rectifying some defects by the Tribunal. Thereafter, the management

represented the papers on 3.8.2007 i.e., with a delay of 512 days.

6. M.A.Nos. 145 and 146 of 2007 were filed by the Management to condone the delay of 512 days representing the papers. The delay of 512 days in representing the papers was not properly explained by the management. The lethargic and the inaction on the part of the management in not taking any serious efforts to prosecute the approval application would only betray the intention of the management to file an application perfunctorily lacking, the will to bring it to its logical end. The applications were returned by the tribunal on several occasions. For representing the said applications and rectifying the defects, the Management took 512 days. By the inaction on the part of the management, the workers were put to hardship and prejudice.

7. The learned counsel appearing for the petitioner submitted that the courts should take a lenient approach while condoning the delay. In support of his contention, the learned counsel relied upon a judgement reported in AIR 1987 SC 1353 (The Collector, Land Acquisition, Anantnag v. Katiji and others) wherein the Hon'ble Supreme Court held that there is sufficient cause shown by the petitioner for condoning the delay, the courts should adopt liberal approach for condoning the same.

8. In the case on hand, the petitioner has not shown any cause for condoning the inordinate delay of 512 days in representing the papers. In the absence of any reason given by the petitioner for condoning the inordinate delay, the ratio laid down by the Apex Court in the above referred judgement does not apply to the facts and circumstances of the present case. For the inaction on the part of the management, the workers cannot be penalised, that too, after several years. In the absence of any acceptable reason given by the management, the Industrial Tribunal has rightly dismissed the applications.

9. In these circumstances, I do not find any reason to interfere with the orders passed by the Industrial Tribunal. Hence, the Writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

Rj

To

The Presiding Officer,
Industrial Tribunal,
Chennai - 600 104.

+1cc to M/S S.Jayaraman, Advocate Sr.6924

+2ccs to M/S. G.Sundaram, Advocate Sr.6907

W.P.No.20401 of 2011 &
M.P.No.1 of 2015

VGI (CO)
rvr
23/02/2015



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