

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/11/2015

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.23224 of 2015

a n d

M.P.No.1 of 2015

TWAD

Tamil Nadu Water Supply and
Drainage board

Special Division

rep. By its Executive Engineer

Hosur

Dharmapuri District.

...

Petitioner

Vs

1. R. Thirumalaikumar

2. The Presiding officer
Labour Court

Salem.

...

Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari to call for the records of the second respondent made in I.A.No.94 of 2011 in I.A.No.76 of 2010 in I.D.No.351 of 1998 on the file of Labour Court, Salem dated 12/12/2012 and quash the same.

For petitioner

...

Ms.S.Thamizharasi

O R D E R

Heard Ms.S.Thamizharasi, learned Standing counsel appearing for the petitioner.

2. This writ petition has been filed praying to call for the records of the second respondent made in I.A.No.94 of 2011 in I.A.No.76 of 2010 in I.D.No.351 of 1998 on the file of Labour Court, Salem dated 12/12/2012 and quash the same.

3. The first respondent, raised a Industrial Dispute before the labour Court, Salem in I.D.No.71 of 1995, wherein the first respondent, claimed for reinstatement in service with all attendant benefits, backwages etc. The petitioner Board was impleaded as the sole respondent in the Industrial Dispute. Though they had engaged the services of the Government Pleader at Salem, it appears that no counter affidavit had been filed and the Board had not taken any steps to defend the matter. Consequently, an ex parte award was passed on 23rd October 1998, thereby, the first respondent was entitled to be reinstated in the service of the petitioner with backwages and continuity of service.

4. The aforesaid award came to be challenged by the petitioner by filing W.P.No.15408 of 2000 and W.M.P.No.22422 of 2000. This Court, while entertaining the writ petition, granted interim stay, on condition that the entire backwages are to be deposited with the second respondent within a period of eight weeks from today. On such deposit, the second respondent shall reinvest the amount in a Nationalised bank for a period of five years in fixed deposit. It appears that the petitioner herein has complied with the said conditional order.

5. Ultimately, after about seven years, the writ petition was taken up for final disposal. The writ petition was disposed of, by an order dated 21st August 2007, thereby, setting aside the award passed by the second respondent in I.D.Nos.351 and 350 of 1998 dated 23rd October 1998 and the matters were remitted back to the labour Court to conduct an enquiry afresh. Further, the petitioner was directed to pay the last drawn wages till the disposal of cases before the forum below.

6. It is rather surprising to note that the petitioner Board, once again left the proceedings unattended. This resulted in another ex parte award being passed by the labour Court on 31st October 2008. The petitioner herein did not take any steps to remedy the breach nor filed any application within a reasonable time.

7. After nearly two years, i.e., during May 2010, the petitioner filed I.A.No.76 of 2010 to set aside the ex parte award dated 31st October 2008 and decide the case on merits and in accordance with law. Copy of the affidavit filed in I.A.No.76 of 2010 has been filed in the typed set of papers which has been sworn to by R.Annamalai, S/o.Mr.P.Ramalingam, Executive Engineer, TWAD, RWS Division, Krishnagiri. It is

stated that case was handed over to the Government Pleader, Salem, Mr.Mohan and he has not informed the Board and Hosur Divisional Office was closed and the files were handed over to the Executive Engineer, RWS Division, Krishnagiri recently and they were unable to ascertain as to whether the cases were pending or not. Therefore, it was stated that Board should be given an opportunity to defend the case and non-intimation from the previous counsel is a reason for non appearance before the Court on 31st October 2008 and due to the fault of the counsel, party should not suffer.

8. Though this is the allegation made in the affidavit, the petitioner Board did not give any specific reasons as to how they came to know about the ex parte award whether their contentions were substantiated by any communications as to whether they applied for any certified copy etc. Thus, the affidavit filed in support of I.A.No.76 of 2010 is bereft of particulars.

9. Subsequently, another Interlocutory Application was filed in I.A.No.158 of 2010, wherein a prayer was made to set aside the ex parte order of dismissal dated 12th November 2010. The said order appears to be an order rejecting the petition in I.A.No.76 of 2010. However, the certified copy of the order has not been filed in the typed set of papers. Thereafter, another application was filed in I.A.No.94 of 2011, wherein the prayer was made to condone the delay of 100 days in filing the restoration of I.A.No.76 of 2010 which was dismissed for default on 12th November 2010. This application for restoration was heard by the labour Court and after assigning elaborate reasons, the labour Court has dismissed the said application. Aggrieved by the same, the petitioner is before this Court.

10. As pointed out earlier, the first affidavit which was filed by the petitioner Board before the labour Court was filed only during May 2010, wherein they sought for setting aside the order dated 31st October 2008. The delay from 31st October 2008 to May 2010 was not properly explained and there is no sufficient cause shown except to blame the counsel engaged by the Board. Thereafter, I.A.No.76 of 2010 was filed and the same was dismissed for default on 12th November 2010. Setting aside the order of dismissal dated 12th November 2010, the petitioner Board filed an application to condone the delay of 100 days in filing the restoration in I.A.No.76 of 2010. Thus, at every stage of the matter, the Officers of the petitioner have shown their lethargic attitude, delay is unexplained and the reasons

assigned in the affidavit filed in support of I.A.No.94 of 2011 is also blaming the counsel stating that the petitioner counsel has not made a proper prayer before the labour Court.

11. This reason can hardly be a reason to justify that the petitioner Board was prevented from approaching the labour Court within the time prescribed. The petitioner is a statutory Board and it has got a large number of Officers to defend their cases and take care of their legal matters. Therefore, the delay which has occurred in the matter of defending these proceedings has to be held to be unexplained to the satisfaction of the Court below. The Court noted that there is a delay of 556 days in setting aside the proceedings.

12. One more disturbing feature is that even though the labour Court, rejected the petition, by an order dated 12th December 2012, the petitioner has approached this Court only by filing the writ petition during July 2015, i.e., after three years. This delay also has not been properly explained and all these factors are sufficient to hold that the impugned order does not call for any interference.

13. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

True Copy

Sub Assistant Registrar

To

1. The Presiding officer
Labour Court
Salem.

+lcc to Ms.S.Thamizharasi, Advocate sr.61869

W.P.No.23224 of 2015

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