

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1/12/2015

C O R A M

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.38218 of 2015

Western Express (P) Ltd
Workers Union
rep. By its Secretary
No.2/160 Main Road
Athipakkam
Vandavasi Circle
Thiruvannamalai District.

...Petitioner

Vs

1. The Presiding Officer
I Additional Labour Court
City Civil Court Buildings
Chennai.

2. The Management of Western Express P Ltd
Theethurai Post
Cheyar
Thiruvannamalai District.

...Respondents.

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records and quash the order dated 6th October 2010 passed by the first respondent in I.A.No.420 of 2013 in I.D.No.254 of 2007 on the file of the first respondent, the Presiding officer, I Additional Labour Court, Chennai.

For petitioner ... Mr.Kotheshwara Rao

For respondents ... Mr.R.Lakshmi Narayanan
Additional Government Pleader

O R D E R

Heard Mr.Kotheshwara Rao, learned counsel appearing for the petitioner.

2. The petitioner/Employees Union has filed this writ petition, challenging the order passed by the first respondent in I.A.No.420 of 2013 in I.D.No.254 of 2007 dated 6/10/2010.

3. The said I.A was filed by the second respondent Management to condone the delay of 1244 days in filing the application to set aside the ex parte award. The petitioner Union filed a claim statement before the labour Court in I.D.No.254 of 2007, contending that non-employment of workmen is not justified for reinstatement of the workmen with backwages.

4. The respondent Management did not file counter affidavit and therefore, the labour Court took the matter on 30/1/2010 and allowed the same by passing the following ex parte award.

"Today the dispute is taken up for ex parte evidence since the respondent was already called absent and set ex parte. Proof affidavit filed by W.W.1. Ex.W.1 to Ex.W.5 marked. Heard. Perused the I.D evidence of W.W.1. Ex.W.1 to Ex.W.5 and records. Claim is proved. Hence the Industrial Dispute is allowed. Therefore, award is passed holding that the demand of the Trade Union claiming wages for the period for which no work was given from January 23 and the demand of the Trade Union claiming again employment to all workmen are justified and the workmen are entitled to backwages from 23/1/2005 till reinstatement, continuity of service and all other attendant benefits.

5. The Management subsequently filed I.A., seeking for condonation of the delay. It was contended that the Company was closed on 1/2/2005, suppressing the closure. The petitioner Union raised the Industrial Dispute and the summons was not served on the authorised person of the Management. Therefore, the Management could have appeared before the labour Court and contested the matter. The Management pleaded that they were not aware of this proceedings and therefore, they could not contest the matter.

6. This application was resisted by the petitioner Union by filing a detailed counter affidavit. There upon the labour Court took up the matter for consideration and after considering the factual matrix opined that the seal of the Management is not found in the acknowledgement card whereas the words "Western Express" are written on the acknowledgement card and it is not known as to who actually received the notice. Further, the Advocate had filed Vakalat for the Union. So he could not have filed vakalat for the Management and vakalat said to have been filed on 15/9/2009 and the same is not on record. Thereafter, the labour Court discussed the other factual aspects and came to the conclusion that the Management has satisfactorily explained the delay.

7. For better appreciation, the findings rendered by the labour Court in the impugned award and extracted below:-

"After 15/9/2009, this Court granted three adjournments for filing written statement and in the fourth hearing the Management was set ex parte for not filing written statement. It appears that the respondent did not make appearance on 15/9/2009 and the note made on that date must have been a mistake. No solid proof is available to show that the claim statement and notice were properly served on the petitioner herein. The petitioner states that they came to know of the ex parte award

from the third parties when the respondent filed an application to implead the third parties. The respondent has admitted that he filed an application to add new parties to the dispute after he has filed the petition to compute the money value of the claim."

8. On a perusal of the above reasoning, it is found that the labour Court has exercised its discretion and condoned the delay by assigning specific reasons. Further more, the ex parte award dated 30/1/2010 is an example of how the ex parte proceedings should not be conducted. Though a party may fail to appear to contest the matter, but it does not mean the petitioner or the plaintiff is automatically entitled to the relief. Even while passing an ex parte order, the Court should briefly discuss as to how the party has established his case is entitled to the relief sought for.

9. In the light of the above discussion, the writ petition fails and the same is dismissed.

10. It is submitted by the learned counsel for the petitioner Union that the dispute was raised in the year 2007 and the labour Court may be directed to consider the matter on merits and give a quick disposal of the matter. Since the dispute is of the year 2007, the labour Court is requested to expedite the disposal of I.D.No.254 of 2007, subject to both the parties co-operating for the early disposal and the endeavour to dispose of the same finally by four months, from the date of receipt of a copy of this order.

No costs. Consequently, the connected Miscellaneous Petition is closed.
Mvs.

Sd/-
Assistant Registrar (C.C.C.)

/True Copy/
सत्यमेव जयते

Sub-Assistant Registrar

To

The Presiding Officer
I Additional Labour Court
City Civil Court Buildings
Chennai.

W.P.No.38218 of 2015

AK(CO)
sd : 15/12/2015