

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S. SIVAGNANAM

W.P.Nos.12972 to 12980 of 2016
and
WMP.Nos.11328 to 11336 of 2016

M/s. DAEJUNG MOPARATS P. LTD.,
represented by its Authorised Signatory
G.Devaraj,
Malrosapuram,
S.P. Koil Street,
Kanchipuram District

... Petitioner in all WPs

Vs

1.The Presiding Officer,
III Addl. Labour Court,
Chennai - 104.

2.G. Palani,
Chengai General Labour Society (CITU),
18/51, EWS NH-1,
Parimelazhagar Street,
Maraimalai Nagar 603 209,
Kanchipuram District.

.. Respondents in
W.P.12972/16

W.P.12973/16

1.The Presiding Officer,
III Addl. Labour Court,
Chennai - 9

2. S. Rajeshkumar

...Respondents

W.P.12974/16

1.The Presiding Officer,
III Addl. Labour Court,
Chennai - 9

2. D. Dhanasekaran

...Respondents

W.P.12975/16

1.The Presiding Officer,
III Addl. Labour Court,
Chennai - 9

2. G. Mayakrishnan ...Respondents

W.P.12976/16

1.The Presiding Officer,
III Addl. Labour Court,
Chennai - 9.

2. G. Kathiravan ...Respondents

W.P.12977/16

1.The Presiding Officer,
III Addl. Labour Court,
Chennai - 104.

2. A. Saravanan ...Respondents

W.P.12978/16

1.The Presiding Officer,
III Addl. Labour Court,
Chennai - 104.

2. P. Shivakumar ...Respondents

W.P.12979/16

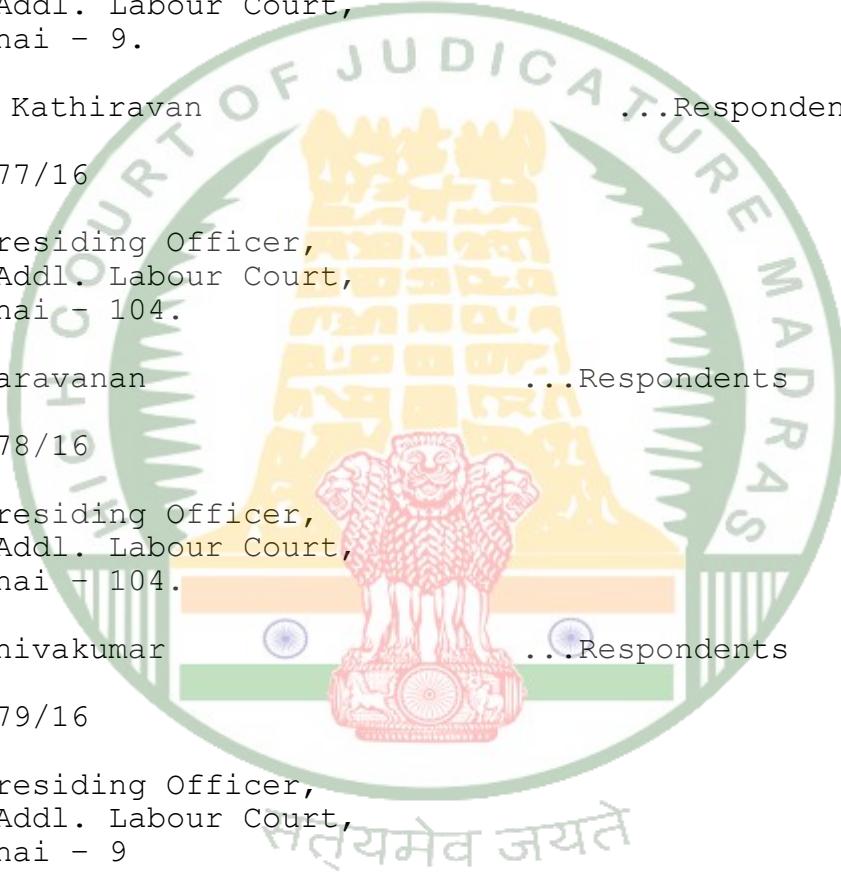
1.The Presiding Officer,
III Addl. Labour Court,
Chennai - 9

2. M. Rajini ...Respondents

W.P.12980/16

1.The Presiding Officer,
III Addl. Labour Court,
Chennai - 104.

2. E. Kanniappan ...Respondents



Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in I.A.No.27 of 2014, 29/14, 31/14, 33/14, 35/14, 37/14, 39/14, 42/14, and 34/14, respectively in I.D.No.205 of 2009, 206 of 2009, 207 of 2009, 208 of 2009, 209 of 2009, 210 of 2009, 211 of 2009, 212 of 2009, and 213 of 2009, respectively dated 28.8.2015 and quash the same and consequently permit the petitioner management to contest the Industrial Disputes on merits upon restoring the disputes on the file of the first respondent.

For Petitioner : Mr.K.V.Sajeev Kumar

For Respondents : R1- Court.
Mr.K.C.Karlmarx (R2)

COMMON ORDER

Heard Mr. V.Sajeev Kumar, learned counsel appearing for the petitioner and Mr.K.C.Karlmarx, learned counsel appearing for 2nd respondent and by consent, these Writ Petitions are taken up for final disposal.

2. In these Writ Petitions, the challenge by the petitioner Management is to orders passed by the third Additional Labour Court, Chennai in I.A.27 of 2014 in I.D.NO.205 of 2009, I.A.No.29 of 2014 in I.D.No.206 of 2009, I.A.31 of 2014 in I.D.No.207 of 2009, I.A.No.33 of 2014 in I.D.No.208 of 2009, I.A.No.35 of 2014 in I.D.No.209 of 2009, I.A.No.37 of 2014 in I.D.No.210 of 2009, I.A.No.39 of 2014 in I.D.No.211 of 2009, I.A.No.42 of 2014 in I.D.No.212 of 2009 and I.A.No.43 of 2014 in I.D.No.213 of 2009 respectively, dated 28.8.2015. The said applications were filed by the petitioner Management to condone the delay of 1198 days in filing petitions to set aside the exparte award passed by the Labour Court dated 12.7.2010. The 2nd respondent raised the dispute on behalf of 9 workmen challenging their non employment and seeking for reinstating them in service with backwages, continuity of service and all other attendant benefits.

3. The case of the petitioner management was that on account of the calous attitude of the respondent workmen, the production level of the company had gone very low and the company could not meet the supply orders and during the relevant time i.e., during 2009, the Managing Director R.K.Sharma had resigned and he had not informed his successor about the exparte order and no records were found by the Management and therefore the Management contended that the delay has occurred in filing the petition to set aside the exparte award and the delay is neither wilful nor wanton, but for the reasons set out in the affidavit filed in support of the condone delay petition.

4. The workmen filed an elaborate counter affidavit questioning the bonafides of the reasons assigned by the Management and contended that the petitioner Management has not shown sufficient cause for the court to exercise discretion to condone the delay. Further it was submitted that, enclosing the copy of the exparte award dated 12.7.2010, the 2nd respondent requested the Management to reinstate the workmen in service as per the award and the said representation was received by the Management on 13.12.2010 and by virtue of which, they were aware of the fact that an exparte award was passed on 12.7.2010. Further, it is submitted that the workmen had filed a claim petition before the Labour Court to compute the wages payable to them, as a consequence of the award passed by the Labour Court and in the computation petition, the Management had filed their objections during April 2013 which fact was not disclosed while filing the condone delay petition.

5. The labour court framed the question as to whether what is the relief the Management is entitled to. After setting out the case as pleaded by both parties, the Labour Court proceeded to refer to various decisions of this court and the Honourable Supreme Court as to how an application under Section 5 of the Limitation Act should be considered. The reason assigned by the Labour Court for rejecting the prayer is done in paragraphs 12 and 13 of the impugned order. The Labour Court disbelieved the stand taken by the Management on the ground that they have not examined any witnesses in support of their claim. Further, it observed that the affidavit is bereft of any particulars and the delay is 1198 days and the workmen were from the weaker sections of society and they were put to financial crisis and accepting the other grounds raised by the workmen, the petition was dismissed on the ground that the Court does not find it a fit case to exercise discretion. Challenging the same, the petitioner Management is before this Court.

6. Though elaborate submissions have been made by the learned counsel for the petitioner as well as the learned counsel for the 2nd respondent workmen, this Court is of the view that before considering as to whether the petitioner Management have been shown sufficient cause for condoning the delay, at the first instance, the Court should peruse the exparte award dated 12.7.2010. The award is an one paragraph award which reads as follows;

"3. To-day the dispute is taken up for exparte evidence. Respondent was already called absent and set exparte. W.W.1 present. Proof affidavit already filed and further W.W.1 examined. Ex.W.1 to W.6 were marked. Records perused. Claim is proved. Hence, this I.D. is allowed, directing the respondent to reinstate the petitioner in service with back wages, continuity

of service and all other attendant benefits. No costs."

7. Time and again, the Supreme Court as well as this Court has deprecated the manner in which such exparte awards/orders are passed by the courts subordinate to High Court. The Labour Court, while passing the exparte award, failed to take into consideration that even an exparte award is an award in the eye of law capable of being executed. Therefore, the Award should be a reasoned award though the respondent, who is entitled to oppose the prayer did not appear before the Court. These cardinal principles have been thrown to the wind while the Labour Court passed the award dated 12.7.2010.

8. Be that as it may, the conduct of the petitioner also cannot be appreciated as they have remained silent in the matter and they had knowledge of the exparte award passed by the Labour Court as on 13.12.2010, when the notice issued by the employees was received by them and also during April 2013, when they filed a claim petition for computing the wages payable. Yet, no effective steps were taken immediately by the Management and they took their own sweet time to file the application for condoning the delay in filing the petition setting aside the exparte award.

9. There can be no quarrel as regards the legal position which has been set out by the Labour Court as to how discretion has to be exercised by the Court while considering application under Section 5 of Limitation Act. However this Court is inclined to interfere with the order for the reason that the order if not interfered, would allow an exparte award dated 12.7.2010 to stand and the said award is an illegal award as it is devoid of reasons and passed in utter disregard to the cardinal principles laid down in various decisions as to how and what manner exparte proceedings should be conducted and orders to be passed. Therefore for that reason alone this court is inclined to exercise discretion and interfere with the impugned order. However the exercise of such discretion is with a condition on account of the attitude of the management. Thus considering all the above facts, these Writ Petitions are allowed subject to the condition that the Management pays a sum of Rs.5,000/- to each of the nine workmen whose cases has been represented by the 2nd respondent and on payment of the said amount and after obtaining appropriate receipt from the 2nd respondent, the petitioner shall file the same before the 3rd Additional Labour Court, Chennai along with a copy of this order and if the same is done, then the petition to condone the delay of 1198 days would stand allowed and the exparte award dated 12.7.2010 would stand set aside and the Labour Court shall adjudicate the dispute after affording an opportunity to both parties to lead oral and documentary evidence.

10. Considering the fact that the dispute of the year 2009, the Labour Court is requested to give earlier disposal to the matters preferably within a period of four months from the date on which the dispute is restored to the file of the Labour Court. In the event, the petitioner Management fails to pay the amount within the time permitted by this Court and produce receipt before the Labour Court, the benefit of this order will not enure to the petitioner and the Writ petitions would stand automatically dismissed without further reference to the Court leaving it open to the 2nd respondent to execute the exparte award dated 12.7.2010.

11. The Writ Petitions are allowed in the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

msr

To

The Presiding Officer,
III Addl. Labour Court,
Chennai - 104.

1 cc to Mr.K.V. Sajeew Kumar, Advocate, Sr. 23965
1 cc to Mr.K.C. Karl Marx, Advocate, Sr. 23403

W.P.Nos.12972 to 12980 of 2016

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GJ II(CO)
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