

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2016

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

WP.No.21349 & 24862 of 2013
& MP.Nos.1 of 2013 & 1 of 2015

O.V.Venkatesan ... Petitioner in both WPs.

Versus

1.S.Sivalingam

2.The Presiding Officer,
The Principal Labour Court,
Vellore. ... Respondents in both WPs.

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari,

(i) to call for the entire records of the impugned order passed by the second respondent dated 28.03.2013 in I.A.No.296 of 2012 in I.D.No.245 of 2005(in W.P.No.21349 of 2013).

(ii) to call for the entire records of the impugned award passed by the second respondent dated 08.12.2006 in I.D.No.245 of 2005 and set aside the same(in W.P.No.24862 of 2013).

For Petitioner(in both WPs) : Mr.V.Jeevagiridharan

For R1(in both WPs) : Ms.S.Thamizharasi

COMMON ORDER

Heard Mr.V.Jeevagiridharan, learned counsel appearing for the petitioner and Ms.S.Thamizharasi, learned counsel, who accepts notice on behalf of the first respondent and with their consent, the writ petition is taken up for final disposal.

2.The petitioner in both writ petitions is the employer. He has filed a petition in W.P.No.21349 of 2013, challenging the order passed by the Labour Court in I.A.296 of 2012 in I.D.No.245 of 2005 dated 28.03.2013. By the said order, the Labour Court had declined to condone the delay of 2365 days in filing the petition to set aside the ex-parte award in

I.D.No.245 of 2005. After the Interlocutory application was dismissed, the Court refused to condone the delay of 2365 days. The employer has come forward with the second writ petition namely W.P.No.24862 of 2013, challenging the award dated 08.12.2006. Therefore, the relief what the employer would get would depend upon the result in W.P.No.21349 of 2013.

3. The facts which are necessary for the disposal of the writ petitions are that the first respondent has raised a dispute under Section 2A(2) of the Industrial Disputes Act, 1947, stating that he was a salesman in the petitioner's shop and he was removed from employment without any reason on and from 27.03.2005. The Labour Court had entertained the dispute and issued notice to the petitioner/employer and it is stated that the notice has not been served on the employer, so he did not appear. In the result, an ex-parte award dated 08.12.2006 was passed in favour of the workman/first respondent. To set aside the said award, the petitioner/employer had filed an application in I.A.No.296 of 2012 with a petition to condone the delay of 2365 days in filing the petition. That application was resisted by the workman/first respondent by contending that the employer has not shown sufficient cause for condonation of delay and the delay being enormous and unexplained, the application deserves to be dismissed. The Labour Court elaborately considered the same and after taking note of the conduct of the employer, had rejected the petition. Challenging the same, the petitioner/employer has filed a petition in W.P.No.21349 of 2013.

4. On the last hearing date i.e., on 21.12.2015, this Court had elaborately heard the learned counsels on either side.

5. The short dispute which falls for consideration is as to whether any notice was served on the employer in I.D.No.245 of 2005. This was a sole issue to be considered because the employer took a stand in the affidavit filed in support of the Interlocutory application in I.A.No.296 of 2012 and stated that he was not served with notice in I.D.No.245 of 2005. Therefore, this Court had adjourned the matter to enable the counsel for the workmen/first respondent to specifically state that as to whether notice has been served.

6. The learned counsel appearing for the first respondent/workmen has immediately applied for the certified copies of the records from the Registry of this Court and relevant docket entries in I.D.No.245 of 2005 has been produced from the relevant dairy entries. It is seen that notice has been served on the employer and an acknowledgment has been received. This is recorded by the Labour Court on 28.12.2005. There is no reason to doubt the said endorsement. Furthermore, the Industrial Dispute was allowed by the Labour Court only on

08.12.2006. Therefore, it is not as if that on 28.12.2005 itself the Labour Court had passed an ex-parte award. Thus, it is clear that the petitioner/employer had approached the Labour Court with unclean hands as the affidavit filed in support of the petition to condone delay states that notice was not served on him, is a false statement. Therefore, nothing more is to be considered in the matter and the writ petitions deserve to be dismissed.

7. Accordingly, the petition in W.P.No.24862 of 2013 is dismissed.

As noticed above, after Interlocutory Application in I.A.No.296 of 2012 was dismissed on 28.03.2013, the petitioner/employer had filed a second writ petition on 03.09.2013 challenging the ex-parte award in I.D.No.245 of 2005 dated 08.12.2006. Thus, the petitioner seeks to achieve indirectly what he could not achieve directly. This Court has already held that the petitioner has made a false statement. Therefore, the question of entertaining the challenge at his instance to set aside the ex-parte award dated 08.12.2006 does not arise, more so, when the Labour Court was convinced that there was no reason made out by the petitioner to condone the delay of 2365 days in filing the petition to set aside the ex-parte award. In these circumstances, this Court cannot interfere with the award passed in I.D.No.245 of 2005. Accordingly, the petition in W.P.No.21349 of 2013 stands dismissed.

8. In the light of the above discussion, both the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-

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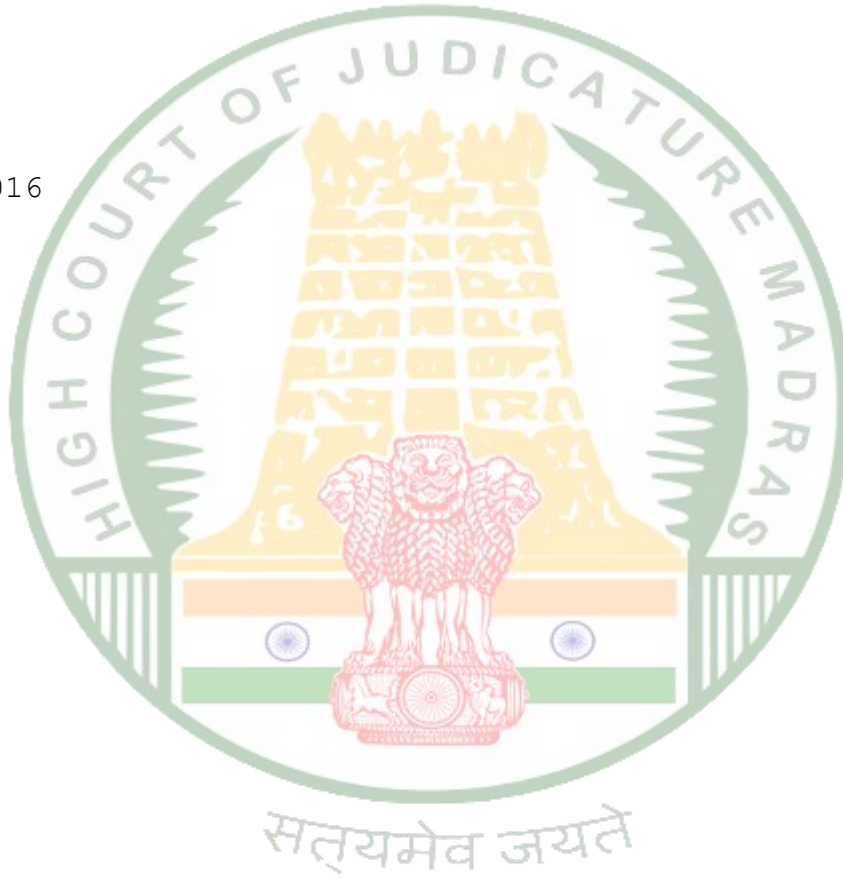
The Presiding Officer,
The Principal Labour Court,
Vellore.

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+1 cc to Ms.S.Thamizharasi Advocate sr.4984
+1 cc to Mr.V.Jeevagiridharan Advocate sr.4910

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