

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.11.2016

Delivered on : 01.12.2016

Coram

The Honourable Mr.Justice HULUVADI G.RAMESH
and
The Honourable Mr.Justice V.PARTHIBAN

W.A. No. 868 of 2016
CMP Nos.11208 & 13387 of 2016

The Management of
M/s.Sri Balaji Cylinders Pvt.Ltd.,
MGR Road, Palavakkam,
Madras-041. ... Appellant

Versus

1. M/s.Sri Balaji Cylinder Employees' Union,
rep. by its Secretary,
Mr.A.K.Paulraj,
161 Thambu Chetty Street,
Madras-600 001
2. The Presiding Officer,
Industrial Tribunal,
Tamil Nadu,
Chennai-600 001.
3. Easwari Enterprises
18 Lakshmana Perumal Nagar,
Kottivakkam,
Madras-41.
4. Jeyabal Enterprises,
Thiruveethi Amman Koil Street,
Palavakkam,
Madras-41.
5. Sundar Industries,
1/5, East Coast Road,
Palavakkam,
Madras-41.

6. Prasanna Enterprises,
10 Selvaraj Colony,
Kottivakkam, Madras-41.

7. Lea Enterprises,
1 Ezzhilagam,
Neelangarai
Madras-41.

8. Azagu Enterprises,
Neelangarai,
Madras-41.

9. Swami and Company,
44 Karpagambal Nagar,
Muttukadu Road,
Kottivakkam,
Madras-41.

10. The Management of Landmark,
27, Saravana Street,
T Nagar,
Chennai-17.

... Respondents

Prayer: This Writ Appeal is filed under Clause 15 of Letters Patent, seeking to set aside the order of the learned single Judge passed in W.P.No.31191 of 2014, dated 17.3.2016 in W.P.No.31191 of 2014.

W.P.NO.31191/2014

Writ petition filed under Article 226 of the constitution of India, for issuance of writ of certiorari filed Mandamus to call for records from the first respondent's impugned order made in I.D.No.52 of 1993 dated 23.10.2013, and to quash the same and to direct the first respondent to restore I.D.NO.52 OF 1993, on its file and decide the same on merits within the time, that may be stipulated by this court.

For Appellant : Mr. V.Karthik for
M/s.T.S.Gopalan & Co.

For Respondents : Mr.S.Jegadeeshwaran for R1
R2- Tribunal
R3 to R10 Given up

JUDGMENT

P.PARTHIBAN, J.

This appeal has been directed against the order passed by the learned single Judge dated 17.3.2016 in W.P.No.31191 of 2014, in and

by which, the writ petition filed by M/s.Sri Balaji Cylinders Employees Union, the first respondent herein, came to be allowed, setting aside the award passed by the Industrial Tribunal dated 23.10.2013 and remanded the industrial dispute to the Industrial Tribunal for fresh consideration.

2. The appellant is involved in manufacture of cylinders and the factory commenced its operation in the year 1981. In 1984, a dispute was raised by M/s.Sri Balaji Cylinder Employees Union (in short, 'the Employees Union') first respondent herein, alleging that 432 workmen were disengaged from their employment on and from 7.11.1984 without following due process of law. The dispute was referred for adjudication before the Industrial Tribunal on the issue of non-employment of 432 workmen which was numbered as I.D.No.52 of 1993. According to the Management, there was no employer and employee relationship as the said workmen were engaged through various contractors, who were also made parties to the industrial dispute, pending before the Industrial Tribunal.

3. The industrial dispute came to be dismissed on 5.5.1994 for non-prosecution, since no claim statement had been filed on behalf of the workmen for more than one year. Thereafter, an application was filed on behalf of the workmen for setting aside the order of dismissal along with an application for condoning delay. However, the Industrial Tribunal on adverting to the submissions made by the parties, dismissed the condone delay application in August, 1995. Nearly after a year, after dismissal of the delay condone application, a writ petition was filed in W.P.No.12026 of 1996 against the above said order.

4. On behalf of the workmen, even the Writ Petition was also not properly prosecuted and the same came to be dismissed in 2004 for non-prosecution.

5. Not to be undone with the repeated dismissal, the Employees Union filed a Miscellaneous Petition after a delay of about 1200 days to restore the writ petition on the file of this Court. By then, it appears that the complete operation of the appellant company had been closed and the property held by the Management was developed as joint venture with the third party and the Managing Director of the company had also died in the meanwhile.

6. While the matters stood thus, the miscellaneous application filed for restoration of the writ petition was allowed by this Court vide order dated 11.3.2011 setting aside the order passed by the Tribunal refusing to condone the delay in filing the application to set aside the ex parte award. Thereafter, in pursuance of the order passed by this Court, the dispute in I.D.No.52 of 1993 came to be restored and the Management had also filed counter statement on 21.2.2012. Thereafter, it appears that the matter was adjourned for nine occasions for evidence on behalf of the workmen, namely, the

Employees Union, once again there was no representation from the Union side despite repeated adjournments. In such circumstances, the Industrial Tribunal rightly allowed the appellant to adduce evidence and consequently, the Management examined the Director of the company as MW.1 who gave evidence in support of the Management's contention to the effect that there was no employee and employer relationship between the workmen and the appellant Management and in the absence of contra evidence from the Employees Union side, the case of the appellant Management stood established. Therefore, the Industrial Tribunal was left with no option, except to hold that the non-employment of 432 workmen was justified and they were not entitled to any relief. It is relevant to mention herein that the contractors who were arrayed as respondents 2 to 8 in the industrial dispute, remained ex parte though it appeared that they had initially participated in the proceedings in 1993. It is obvious that by efflux of considerable time from the date of original reference in 1993 and the date of adjudication in 2013, nearly after 20 years, the Contractors whose evidence was also crucial for adjudicating the claim, had vanished from the scene particularly so, the company itself had stopped its operation in the meanwhile.

7. As against the said award, dismissing the claims of the employees, the Employees Union approached this Court by way of writ petition in W.P.No.31191 of 2014 with the following prayer:

"To issue Writ of Certiorarified Mandamus, to call for records from the first respondent's impugned order made in I.D.No.52 of 1993 dated 23.10.2013, quash the same and to direct the first respondent to restore I.D.No.52 of 1993, on its file and decide the same on merits within the time, that may be stipulated by this Court."

8. According to the first respondent Employees Union, the date of hearing was wrongly noted and due to said wrong noting, the Secretary of the Employees Union, could not remain present in the Court, however, subsequently, he came to know that the claim had been dismissed for non-prosecution. It was argued on behalf of the Management that the reasons attributed for the non-appearance on behalf of the Employees Union, were vague and unconvincing and from the past, it could be seen that the conduct of the Employees Union had been completely lethargic and not at all showing any inclination to prosecute their claim diligently either before the Industrial Tribunal or before this Court.

9. The learned counsel for the Management also relied upon a decision of the Hon'ble Supreme Court in (2009) 13 SCC 746 (State of Karnataka and another versus Ravikumar) and contended that stale claim cannot be permitted to be referred and in the instant case, the claim which arose in 1984, had been hanging fire solely because of the conduct of the Employees Union for nearly over 30 years.

10. The learned Judge, after advertng to the submissions of the parties, has come to the conclusion that the matter being a labour issue and at some point of time, Employees Union had been prosecuting the matter diligently and non-appearance on behalf of the Employees Union was not willful and tainted with mala fide and not for any collateral purpose. The learned Judge held that in the absence of any averment raised on behalf of the Management, even assuming there was some default on the part of the Employees Union and the case being projected by the Union in respect of 432 workmen, a liberal approach had to be adopted in the matter and that the Employees union had also not deliberately failed to appear before the Industrial Tribunal. In such view of the matter, the learned Judge allowed the Writ Petition and set aside the ex parte award of the Tribunal and remanded the matter to the industrial Tribunal for fresh consideration. The present appeal has been filed against the said order of the learned Judge.

11. Learned senior appearing for the appellant company assailed the order of the learned single Judge, by contending that the relief has been granted to the Employees Union without properly appreciating the conduct of the parties right from the time when the dispute referred for adjudication in 1993. Though the learned Judge agreed that the inordinate delay was not the fault of the Management, yet decided to grant the relief to the workmen and remanded the matter for adjudication after a period of 23 years.

12. As stated supra, the stand of the Management was the workmen who were employed through various contractors who were arrayed as parties to the industrial dispute, but due to passage of time, the Contractors remained ex parte and therefore, the Management will be effectively prevented from establishing their case in the absence of the Contractors. Moreover, the company itself, as contended by the learned senior counsel, has been wound up and the operation of the company had come to complete standstill several years ago which fact was not disputed seriously by the learned counsel for the Employees Union, first respondent herein.

13. Learned counsel appearing for the Employees Union would contend that having considered the case of the Employees Union the learned Judge was of the view that a liberal approach is required to be adopted in the matter, has rightly passed the order, which requires no interference. The learned counsel also relied upon a decision of the High Court of Orissa reported in 2016-IV-LLJ-148 (Ori) (HPCL, BBSR versus Govt. of India, Ministry of Labour, New Delhi and others. However, on going through the same, we find that the same would no way helpful since it has no application to the factual matrix of the present case and not germane to the issue on hand.

14. The finding of the learned single Judge that the Employees Union had shown diligence at some point in prosecuting the case

cannot be countenanced on fact as could be seen from the records, which speak otherwise. It is admitted position that right from the date of reference of the dispute in 1993, the conduct of the Employees Union has been consistent in not prosecuting the claim promptly and diligently. Further, the reasoning of the learned Judge that once the Writ Petition was allowed vide order dated 11.3.2011, the industrial dispute virtually came to be restored thereafter, would completely wipe out and any delay on the part of the Employees Union till the period, cannot accepted for the simple reason that even after the restoration of the industrial dispute, the conduct of the Employees Union in prosecuting the claim was far from satisfactory. Several adjournments were granted thereafter, however, no evidence was let in by the Employees Union in support of their claim and the appellant company was ultimately directed to adduce evidence on its behalf and only thereafter, the main award was passed. The conclusion of the learned Judge that the award was ex parte, as there was no contest between the parties, cannot also be countenanced in law for the reason that the claim statement had been filed on behalf of the workmen and sufficient opportunity was afforded to them to contest the case and the Tribunal cannot be faulted with its ultimate decision.

15. Be that as it may, the complaint of the workmen was that they were disengaged from service by the Management way back in the year 1984 and that they were directly employed the Management. As against the said contention, the Management contended that there was no employee or employer relationship and the Management had no clue at all as to who were the workmen since they were totally engaged by the various contractors from time to time. It is now more than three decades since the original cause of action had arisen and the case of both the Employees Union and the Management, have to be proved only through evidence. At this distant point of time, whether at all it would possible for any party to establish their case, has to be taken note of. We are of the view that at such a belated stage, the order of the learned single Judge remanding the matter for fresh consideration, cannot be countenanced both on law and facts. Inordinate delay is solely attributable to the conduct of the Employees Union and at every stage, there was brazen failure to prosecute their claim promptly before the Tribunal. Moreover, even in the claim statement filed in the industrial dispute, there were no averments to say that when the workmen were employed and how they got their employment, etc., except saying that the workmen had completed more than 240 days in a period of 12 months and at the time of their disengagement, they were not paid any compensation in terms of the provisions of the Industrial Disputes Act. Such vague claim cannot result in any adjudicatory clarity after a period of three decades, towards resolving the dispute between the parties. More so, the appellant company itself had been wound up and the present issue for fresh consideration would not serve any body's interest and purpose.

16. In view of the above, the order passed by the learned single

Judge, dated 17.3.2016 remanding the industrial dispute in I.D.No.52 of 1993 for fresh consideration before the Industrial Tribunal, is set aside.

Accordingly, the Appeal is allowed. There shall be no order as to costs. Consequently, connected CMPs are closed.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

Suk

To

The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai-600 001.

+1 cc to Mr.T.s.Gopalan and co. SR.NO. 70715

+1 cc to Mr.Jagadeswaran Advocate SR.NO. 71380

Pre delivery Judgment
in W.A.No.868 of 2016

pk[co]
RD 29/12/2016

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