

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.39280 of 2016

and W.M.P.Nos.33629 & 33630 of 2016

The Commissioner [ Petitioner ]  
Corporation of Chennai  
Ripon Buildings  
Chennai 600 003.

Vs

- 1 The Presiding Officer  
I Addl. Labour Court Chennai.
- 2 E.Sampath [Respondents]

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records in respect of the Impugned Award in I.D.No. 243 of 1994 dated 05.03.1996 passed by the 1st Respondent and quash the same.

For Petitioner ... Mrs.Karthikaa Ashok

ORDER

This writ petition has been filed by the petitioner, who is the Commissioner of Corporation, challenging the award dated 05.03.1996 passed by the labour Court, in I.A.No.243 of 1994, directing reinstatement of the 2<sup>nd</sup> respondent, who was terminated from service for his unauthorised absence, apart from paying backwages to him.

2.1 The 2<sup>nd</sup> respondent was employed under the petitioner Corporation as a labourer from 09.10.1972. He remained absent without reporting to duty unauthorisedly from 20.11.1991 to 17.09.1992. Thereafter, on the employee's assurance that he will be regular in his attendance, he was permitted to join duty on 18.09.1992, as per memo dated 17.09.1992.

2.2 Even after the above incident, the 2<sup>nd</sup> respondent bent upon absenting himself from work without reporting from 01.02.1993. Therefore, considering the fact that he is a habitual absentee, after issuance of show cause notice to the

2<sup>nd</sup> respondent, framing of charges and conducting enquiry. the 2<sup>nd</sup> respondent was terminated from service on 15.09.1993.

2.3 Aggrieved over the said termination order, the 2<sup>nd</sup> respondent preferred an appeal before the Appellate Committee, which also rejected the same, by virtue of the Council Resolution No.353/1993 dated 03.09.1993.

2.4 As against the termination order, the 2<sup>nd</sup> respondent raised an Industrial Dispute before the 1<sup>st</sup> respondent in I.D.No.243 of 1994 for reinstatement with continuity of service, wherein, an exparte award was obtained by him on 05.03.1996. The said award is being challenged in this writ petition.

3. Heard Mrs.Karthikaa Ashok, learned counsel appearing for the petitioner Corporation and perused the materials available on record.

4.1 A perusal of the records would reveal that the 2<sup>nd</sup> respondent was a habitual absentee and the petitioner Corporation had rightly took action and following the procedure, he was rightly terminated from service.

4.2 Absenteeism has become a chronic problem in the administration of Government Offices including the Corporation of Chennai. When such is the position, absentees should be dealt with very diligently and very strongly, otherwise, there would not be any public service at all done by the Local Bodies.

4.3 When such is the requirement of the administration, when the 2<sup>nd</sup> respondent was terminated from service and he had raised an Industrial Dispute before the Labour Court, it is the bounden duty of the petitioner Corporation to contest the said labour Court proceedings. However, it is seen that the petitioner had not chosen to defend their case, resulting in, passing of an exparte award on 05.03.1996. No steps have been taken sofar to challenge the said award, even after passing of the said award on 05.03.1996.

4.4 After the award was passed in 1996, in the year 2003, the 2<sup>nd</sup> respondent filed C.P.No.382 of 2003 under Section 33(C) (2) of the Industrial Disputes Act, claiming computation of monetary benefits due to him. The said claim petition was ordered on 31.10.2007. Thereafter, the 2<sup>nd</sup> respondent filed another C.P.No.129 of 2012 to compute the value of arrears of salary payable to him. The said C.P. was also ordered on 23.06.2015. Only to execute the award, the CPs have been filed by the 2<sup>nd</sup> respondent. At this juncture only, it seems, the petitioner had been advised to file this writ petition challenging the award, which has been passed about 20 years ago, which would only prove the sorry state of affairs in the

administration for the past 20 years. Irrespective of the change in Government, the officials remains the same and they have not taken any diligent effort to safeguard the interest of the Local Body, for which they are employed and they are getting salary.

4.5 It is seen that no follow-up action has been taken by the officials concerned who are incharge to follow-up the matters of this kind. Even the Panel Counsels have not shown any interest. If they had shown interest, this kind of delay would not have occurred. It is not only in the Corporation of Chennai, but also through out in Tamil Nadu, this sorry state of affairs are prevailing in the administration for the past 20 years.

4.6 Perhaps about Rs.2000 crores are knocked away by unscrupulous elements by filing frivolous and false suits and claim petitions before the various forums and there was no proper defence by the Government Pleaders or the Panel Counsels to prosecute the case properly. Even if adverse orders are passed, those orders are not challenged before the appropriate appellate forum/Court, within the time. This case is a text book example as to how an adverse order was not challenged, even after the lapse of 20 years, especially, when the 2<sup>nd</sup> respondent has chosen to file claim petitions in 2003 and 2012 and able to get orders in 2007 and 2015, the Corporation has now only chosen to challenge the award passed in 1996.

4.7 The Corporation Officials have been sleeping like Rip-Van Winkle and only when the Claim petitions have been filed and adverse orders are passed, the Officials of the Corporation had waken up from their deep slumber and filed this writ petition. Again, the officials, who were and who are incharge, have to be blamed for that. Mere deprecation alone is not enough. Therefore, the officials as well as the Panel Counsels, who are responsible for bringing the Corporation to this position viz., not challenging the adverse order for the past 20 years, have to be proceeded with.

5. In view of the above, the Commissioner of Corporation is directed to pass appropriate orders, appointing an Enquiry Officer to look into the matter and take remedial measures. Only if the persons who are negligent or careless are taken into task, this kind of attitude on the part of them in not following up the matters, inspite of adverse orders passed against the Local Bodies would not recur again. The responsibility should be fixed on the concerned officials and for non compliance in discharging their duties, they should be prosecuted or proceeded with departmentally then and there. Then only, the sense of responsibility will be instilled in the minds of the officials concerned.

6. In this matter, in paragraph No.5 of the affidavit, it has been stated that due to various administrative reasons and change of panel counsels, with the delay of 20 years, the writ petition has been filed. It has already been held by the Hon'ble Supreme Court that administrative reason cannot be a ground and the change of panel advocates hardly be the reason for the delay.

7. De hors the merits in the case of the petitioner, this Court is inclined to dismiss the writ petition only on the ground of delay and laches. After 20 years, if the matter is to be re-opened, there will not be any finality in the proceedings. It is disheartening to note this kind of attitude exhibited by the officials of the Corporation. However, the Present Commissioner may not be knowing what has happened in the past. But, the past act cannot be condoned. Therefore, on the ground of laches, the writ petition fails and the same is dismissed. The petitioner Commissioner is directed to take appropriate action against the officials who are responsible for the delay in taking action against an adverse order passed.

8. While dismissing the writ petition, this Court awards cost of Rs.25,000/- (Rupees twenty five thousand only) to be paid by the petitioner to the Chief Justice Relief Fund, within a period of two weeks from the date of receipt of a copy of this order. It is made clear that this order cannot be taken as a castigation or any opinion expressed against the present Officer, because, he is no way responsible for the present position.

Connected miscellaneous petitions are closed.

Call the matter after two weeks for reporting compliance.

Sd/-

Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

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To

1. The Commissioner  
Corporation of Chennai,  
Chennai-3

WEB COPY



2. The Presiding Officer  
I Addl. Labour Court Chennai.

Copy to

1. The Section Officer  
Writ Section (Posting)  
High Court, Madras  
(For posting this matter for reporting compliance 24.11.2016)

2. The Section Officer  
Accounts Section,  
High Court, Madras-104

3. The Sub Assistant Registrar  
Account Section,  
High Court, Madras

1 cc to M./s. Karthikaa Ashok, Advocate, sr. 64745

W.P.No.39280 of 2016

SV (CO)  
kk 16/11



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