

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2017

CORAM

The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.8845 of 2004

Pudukottai Panchayat,
rep. by its President Mr.C.Inbasekar,
Tirupathur Taluk,
Vellore District.

.. Petitioner

VS.

1.K.Kliappan

2.The Principal Labour Officer,
Labour Court,
Vellore,
Vellore District.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, calling for the records of the order passed in I.A.No.90 of 2003 in I.D.No.323 of 2001 on the file of the second respondent dated 29.12.2003 and quash the same and to direct the second respondent to take into file the application filed by the petitioner to set aside the order passed in I.A.No.232 of 2001 dated 13.03.2002 on the file of the second respondent ordering the reinstatement of the first respondent in the post of Over Head Tank Operator in Pudukottai Panchayat Union.

For Petitioner : No Appearance

For Respondents : No Appearance

ORDER

Subject matter of the writ petition arises under the Industrial Disputes Act, 1947 (hereinafter referred to as "*ID Act*" for brevity). The first respondent herein was working as a Over Head Tank Operator in Pudukottai Panchayat, Tirupathur Taluk, Vellore District. Pudukottai Panchayat, Tirupathur Taluk, Vellore District is hereinafter referred to as "*said panchayat*" for the sake of convenience and clarity.

2. First respondent was drawing a salary of Rs.100/- per month. It is the first respondent's say that as per G.O.Ms.No.191, dated 20.04.1998, he is entitled to salary of Rs.525/- per month with effect from 01.01.1998, but the said panchayat was not paying the same deliberately. It is the further case of the first respondent that on 06.9.1999, pumpset motor malfunctioned and needed repair. The first respondent

intimated the same to the said panchayat, but according to the first respondent, instead of repairing the pumpset motor, the key was taken away on 14.09.1999 and the first respondent was orally terminated from service. It is the say of the first respondent that he was not paid retrenchment compensation for his past service and therefore, the oral termination is, *inter alia*, in violation of Section 25-F of the ID Act. The first respondent raised an Industrial Dispute, which was taken up as I.D.No.232 of 2001 on the file of the second respondent before me i.e., the Principal Labour Officer, Labour Court, Vellore, Vellore District (hereinafter referred to as "*said Labour Court*" for the sake of brevity, convenience and clarity).

3. According to the first respondent despite due service of notice, the said panchayat did not appear before the said Labour Court in I.D.No.232 of 2001 and therefore, the said Labour Court left with no option passed an exparte Award dated 13.03.2002, *inter alia*, ordering reinstatement of the first respondent herein in service with continuity of service, back wages and other attended benefits. Thereafter, the said panchayat woke up and filed an

application to set aside the exparte Award along with an application to condone the delay of 284 days. Opining that the reasons assigned for the delay in filing set aside application were not convincing and bonafide too, the said Labour Court, in and by an order dated 29.01.2003 dismissed the said application being I.A.No.90 of 2003. This order of the said Labour Court dated 29.01.2003 made in I.A.No.90 of 2003 in I.D.No.232 of 2001 is called in question in the instant writ petition by the said panchayat and therefore, the order dated 29.01.2003 made in I.A.No.90 of 2003 in I.D.No.232 of 2001 is hereinafter referred to as " *impugned order*".

4. To be noted, the instant writ petition was listed before me on 12.07.2007 and the following order/proceedings came to be passed:

"When the matter was called, there was no representation for both sides in the first call.

The matter was passed over and called again before lunch/before rising. In the second call, Mr.V.Sivaraman, representing M/s.K.M.Ramesh,

learned counsel appearing for R1 seeks an adjournment seeking personal inconvenience. List the matter in due course, whenever the matter is listed."

5. The aforesaid order/proceedings speaks for itself.

6. Today when the writ petition was listed and called, there was no representation for both sides. The case was passed over and called again. The position remains same i.e., there was no representation for both sides, in the second call also. As stated supra, the writ petition was filed on 01.03.2004 and has therefore been pending in this Court for a decade and three years and in other words, the writ petition has been pending in this Court for more than 13 years now.

7. It is also to be noted that originally an order of interim stay was granted on 02.04.2004 when the writ petition was admitted and rule nisi was issued vide W.P.M.P.No.10354 of 2004.

8. Respondent No.1 before me (hereinafter referred to as "workman" for the sake of convenience and clarity) took out a vacate stay petition being W.V.M.P.No.1253 of 2004 and after hearing both sides, in and by a detailed order dated 16.03.2006, this Court vacated the interim order dated 02.4.2004 granted in W.P.M.P.No.10354 of 2004.

9. Adjourning such matters merely for repeated non-appearance of counsel more so when the matter has been pending in this Court for more than 13 years only contributes to avoidable delay in disposal of the other cases, besides contributing to avoidable addition to arrears.

10. Therefore, though there is no representation for both sides in the second call also today, I am taking up the writ petition, examining the same on available records and I shall be passing an order on merits.

11. I have perused the impugned order of the said Labour

Court. Though it is an interlocutory application, oral evidence has been let in and on behalf of the said panchayat, one witness being the President of the said panchayat has been examined. There was no oral evidence or documentary evidence on behalf of the workman. Four Exhibits (Exs.R1 to R4) were marked on behalf of the said panchayat.

12. In the impugned order, (from the oral evidence, exhibits and pleadings before the said Labour Court) it has been held that notice was served on the said panchayat on 27.11.2001. The said Labour Court has recorded the plea of the said panchayat that they received the notice and kept quite because they did not know about Court proceedings and were ignorant about the same. The said Labour Court has also noticed that in the oral evidence let in, the President of the said panchayat has admitted that notice was received on 27.11.2001, but he did not know what it was. Thereafter, the said panchayat received a summon on 23.12.2002, after which, they approached a lawyer.

13. Most importantly, the said Labour Court has clearly

noticed that in the interregnum (i.e., between 27.11.2001 and 23.12.2002), on 18.9.2002, the Block Development Officer (hereinafter referred to as "*BDO*" for brevity) has sent a communication, which has been marked as one of the Exhibits before the said Labour Court, wherein and whereby, the BDO has ordered that the said workman should be reinstated as per the order of the Award of the said Labour Court as aforesaid. There is one more communication dated 20.11.2002 to this effect which has also been marked as an Exhibit and the said Labour Court has alluded to the same.

14. After referring to all the communications, oral and documentary evidence as also pleadings before it, the said Labour Court has held that the plea of the said panchayat that they received the notice, but did not act as they were unaware of the Court proceedings is unacceptable. Further more, the said Labour Court, vide impugned order has clearly held that the petition has been filed only to delay and drag on the proceedings with the oblique objective of depriving the workman, benefits of the Award. To buttress this finding, the said Labour Court has

clearly held by referring to the aforesaid communication from BDO, wherein and whereby, the President of the said panchayat has been directed to reinstate the workman. Therefore, the said Labour Court has come to the conclusion that application to set aside the exparte order more so with a delay of 284 days is not only not convincing but not bonafide too and has been filed with an oblique motive of denying the workman's dues.

15. More over, as set out by me supra, the interim stay of operation of the order of reinstatement of the workman as Over Head Tank Operator passed by the said Labour Court in I.D.No.232 of 2001 dated 13.03.2002 granted by this Court on 02.04.2004 at the time of admission of the writ petition was subsequently vacated after a detailed hearing vide a order dated 16.03.2006 in W.V.M.P.No.1253 of 2004.

16. Owing to all that have been stated supra, I am of the opinion that there is no infirmity or illegality in the impugned order of the said Labour Court. I have perused the affidavit filed in support of the writ petition and the grounds raised therein. To

my mind, I find no tenable grounds much less acceptable reasons or grounds raised in the affidavit warranting interference of this Court in the impugned order of the said Labour Court.

17. I, therefore, have no hesitation in coming to the conclusion that the writ petition is bereft of merits and the same is liable to be dismissed.

18. Before parting with the case, I am to mention that the workman was 57 years old way back in 2004 when the vacate stay petition (W.V.M.P.No.1254 of 2004) was filed and the interim stay granted in W.P.M.P.No.10354 of 2004 was also vacated on 16.03.2006. It is quite possible that the writ petition has become infructuous. However, the counsel on record for the writ petitioner has solemn and sanctified duty to appear before the Court when the matter is listed and called and report the same even if the writ petition has become infructuous. Besides placing this on record, I am not going further into whether the writ petition would have actually become infructuous or not, as I would be hazarding a guess in doing so and as I am disposing of

the writ petition on merits.

19. In the result, the writ petition is dismissed. No costs.

31.08.2017

Index : Yes/No

Internet : Yes/No

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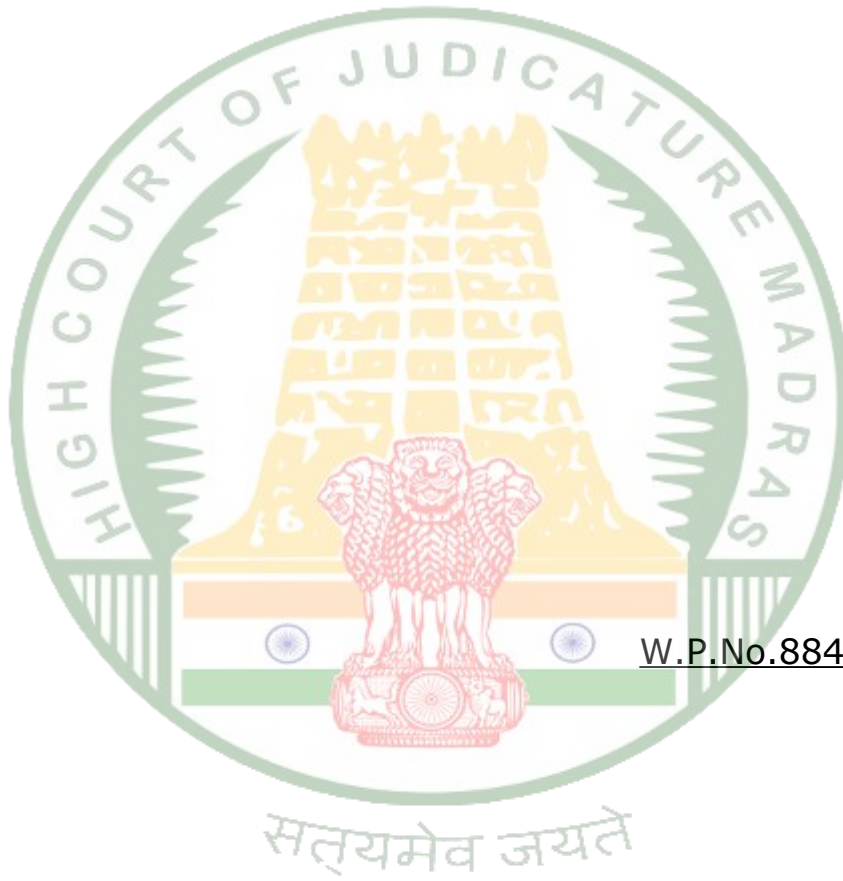
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M.SUNDAR, J.

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