

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 31.07.2017

Date of Verdict : 06-09-2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.34214 & 34215 of 2013

The Management of
Hallmark Industries,
No.A30, Madras Export Promotion Zone,
Tambaram, Chennai-600 045.

.. Petitioner in
both W.Ps.

versus

1. III Additional Labour Court,
Chennai.

2. V.Balakrishnan

.. Respondents in
both W.Ps.

Prayer in W.P.No.34214 of 2013: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records of first respondent dated 14.11.2013 in I.A.No.356 of 2012 in I.D.No.277 of 2006 and quash the same.

Prayer in W.P.No.34215 of 2013: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records of first respondent dated 01.12.2009 in I.D.No.277 of 2006 and quash the same.

For petitioner : Mr.V.P.Raman
For respondents : Mr.R.Jaikumar for
M/s.T.Fennwalter Associates-R2

COMMON ORDER

The present writ petitions have been filed, seeking for the following reliefs:

W.P.No.34214 of 2013:

"To issue Writ of Certiorari, to call for the records of first respondent dated 14.11.2013 in I.A.No.356 of 2012 in I.D.No.277 of 2006 and quash the same.

W.P.No.34215 of 2013:

"To issue Writ of Certiorari, to call for the records of first respondent dated 01.12.2009 in I.D.No.277 of 2006 and quash the same.

2. The petitioner company was engaged in manufacture of ready made garments for export since 1987. There were approximately 200 workers, working in the company and the second respondent was one of the workers. According to the second respondent/workman, he was retrenched in violation of mandatory provisions. He raised an industrial dispute against his non-employment and the same was referred for adjudication vide I.D.No.277 of 2006 before the first respondent/Labour Court. The petitioner/management was set ex parte and an award was passed in I.D.No.277 of 2006 dated 01.12.2009 by the Labour Court, which is extracted as under:

AWARD

"This dispute has been raised under Section 2-A(2) of the Industrial Disputes Act, by the workman seeking reinstatement with back wages, continuity of service and other attendant benefits.

"2. The respondent has not filed counter statement.

"3. Today the dispute is taken up for enquiry. WW.1 present. The respondent called absent and set ex parte. Proof affidavit already filed and further WW.1 examined. Exs.W1 to W7 are already marked. The claim is proved. Hence, the I.D. is allowed and the respondent is directed to reinstate the petitioner in service with back wages, continuity of service and other attendant benefits. No costs."

3. According to the petitioner/management, their factory was closed and was not functioning between 2002 and 2006 and therefore, the pendency of the dispute before the Labour Court could not be pursued effectively on behalf of the management. However, since the award which was passed on 1.12.2009, was not implemented by reinstating the second respondent/workman into service and no wages have been paid in terms of the award, the second respondent/workman filed an execution petition in E.P.No.96 of 2011 for execution of the award and also filed an

interlocutory application in I.A.No.36 of 2012 seeking for attachment of the machinery of the petitioner unit. By order, dated 14.06.2012, the first respondent/Labour Court ordered attachment. Aggrieved by the ex parte award and subsequent proceedings of attachment ordered by the first respondent Labour Court, the petitioner approached the Labour Court by filing three interlocutory applications, viz., I.A.Nos.355, 356 and 357 of 2012 in E.P.No.96 of 2011 in I.D.No.277 of 2006, seeking to condone the delay in filing the application to set aside the ex parte award dated 1.12.2009 and to grant stay of further proceedings in I.D.No.277 of 2007 pending disposal of the applications.

4. The first respondent/Labour Court, after hearing the rival submissions of the parties, vide order dated 14.11.2013 dismissed the interlocutory application in I.A.No.355 of 2012 filed by the petitioner, seeking to condone the delay in filing the application for setting aside the ex parte award. Consequent to this, the other interlocutory applications, viz., I.A.Nos.356 and 357 also came to be dismissed.

5. As against the order dated 14.11.2013 of the Labour Court dismissing the condone delay application, the petitioner has come forward with a writ petition in W.P.No.34214 of 2013 and also filed another writ petition in W.P.No.34215 of 2013 as against ex parte award passed by the Labour Court dated 1.12.2009.

6. Since the facts and the issues involved in both the writ petitions are common, these writ petitions are taken up together for final disposal.

7. By order dated 16.12.2013, this Court granted interim stay, subject to the petitioner depositing 50% of the award amount to the credit of I.D.No.277 of 2006 on the file of the first respondent. Pursuant to the same, it appears that the petitioner/management has also deposited the same.

8. Mr.V.P.Raman, learned counsel appearing for the petitioner management would submit that although it is an ex parte award, no reasons were assigned by the Labour Court in passing the award in favour of the workman as against the petitioner management. The learned counsel would rely upon a decision of a Division Bench of this Court in W.A.No.657 of 2007 on 2.8.2013, reported in 2013 SCC OnLine Mad 2317 (Commissioner Tiruppur Municipality, Tiruppur versus the Presiding Officer and another), wherein, this Court has held as under in para 13 and 14:

"13. It is clear from the above judgments that even though the Management

remained absent, the Labour Court was required to consider the dispute and pass award giving reasons and such award should be a speaking order on merits and based on materials available before the 1st respondent. Before the Labour Court, Management was set ex parte and the award is a non-speaking award. In the Labour Court, on the side of the workman, workman was examined as W.W.1 and letter sent by the 2nd respondent to the appellant Management dated 3.10.2000 and the acknowledgment card were marked as Exs.W.1 and W.2. The Labour Court after stating that W.W.1 was examined and that Exs.W.1 and W.2 were marked and that the claim is proved, passed an award directing the appellant Municipality to reinstate the 2nd respondent with back wages, continuity of service and other attendant benefits."

"14. In our considered view, the award passed by the Labour Court is a non-speaking award. Notwithstanding that the Management did not appear, a duty was cast upon the Labour Court to consider the question whether the plea of the 2nd respondent that he was employed as a casual labourer by the Municipality and that in violation of the rules he was terminated. But there is no such application of mind by the Labour Court and the award is a non-speaking award. Based on the ex parte award and also the orders passed in the Computation Petitions, G.O.Ms.No.251 dated 23.2.2005 was passed. Only thereafter the appellant Municipality has filed the writ petition challenging the award and there was a delay of three years in filing the writ petition. The learned single Judge appears to have taken note of the Government Order in G.O.Ms.No.251 dated 23.2.2005 and the delay in filing the writ petition. Of course, there is a delay in filing the writ petition, but the delay cannot be the reason to sustain a non-speaking award passed by the Labour Court. Such non-speaking award would have implications on the Management, more so, when the appellant is a civic body like Municipality. In view of the fact that the appellant Municipality has not taken prompt

steps, the interest of justice would be met by awarding costs in favour of the second respondent and also directing the appellant Management to deposit a sum of Rs.1 lakh to the credit of I.D.No.436 of 2001 on the file of Labour Court, Coimbatore."

9. In the above decision, the learned Division Bench has clearly held that notwithstanding the management's absence, a judicial duty was cast upon the Labour Court to pass a speaking award. He would, therefore, submit that the issue is directly covered in his favour by the decision of the learned Division Bench and therefore, the award passed by the Labour Court dated 1.12.2009 which is extracted in full supra, is liable to be interfered with. In the same breadth, the learned counsel for the petitioner/management would submit that the dismissal of interlocutory application, seeking to condone the delay in filing the application seeking to set aside the ex parte award dated 1.12.2009, the Labour Court had not appreciated the stand of the management since during the relevant period, the factory was not functional and therefore, the proceedings pending before the Labour Court could not be pursued effectively on behalf of the management. In any event, the learned counsel would impress upon this Court that in view of the non-speaking award, the Labour Court is required to revisit the entire proceedings afresh after hearing the version of the management vis-a-vis claim of the second respondent/workman.

10. Be that as it may, when the order of attachment was passed by the Labour Court, this Court has intervened and directed the petitioner management to deposit 50% of the back wages computed and pursuant to the same, a sum of Rs.3,95,000/- was deposited by the management.

11. At the instance of the second respondent/workman, by order, dated 11.6.2014, while making the stay of operation of the award absolute, this Court permitted the second respondent/workman to withdraw a sum of Rs.3,00,000/- out of the deposit made by the management. Thereafter, it appears that on behalf of the management, writ appeals in W.A.Nos.769 and 770 of 2013 were preferred by the petitioner/management, whereby, the order order passed by the learned single Judge, permitting the workman to withdraw Rs.3,00,000/- was modified, allowing the workman to withdraw only a sum of Rs.60,000/-. This order was passed by the learned Division Bench, having taken note of the factual position that the second respondent/workman was gainfully employed elsewhere. The learned counsel for the petitioner would submit that the same position remains as on date.

12. Upon notice, Mr.R.Jaikumar learned counsel for the second respondent/workman entered appearance on behalf of the second respondent/workman and submitted that several opportunities have been given to the management and as could be seen from the recordings of the Labour Court in its order dated 14.11.2013 in I.A.No.356 of 2012 in I.D.No.277 of 2006 a very detailed reasoning was spelt out in the order and for better appreciation of the reasoning of the Labour Court, the same is extracted as under:

"5. Petitioner is the management which had filed this interlocutory application to condone the delay of 1053 days to set aside the ex parte award dated 1.12.2009 in I.D.No.277 of 2006 passed by this Court. The management has also filed two other IAs, one is to set aside the award passed and another is to stay the operation of the above award. The main industrial dispute was filed in 2006 and as well as industrial dispute was taken on file, this Court has sent notice to the management and after receiving the notice, the management remained absent on 14.12.2006 and the management was set ex parte on 14.12.2006. After adjourning the case for several occasions, at last an ex parte award was passed on 2009 only. After passing of the award, the award was also published in the Gazettee in the year 2009 itself. The workman had sent legal notice to the management on 25.1.2010 to comply the award passed by this Court. But, after receiving the notice, the management remained silent. Hence, the workman had filed execution petition and after receiving the notice in execution petition also, the management remained ex parte and did not appear before this Court. Hence, on 14.6.2002, this Court has passed attachment order. The petitioner had not explained the delay for filing the ex parte set aside petition within the time. The reasons stated in the affidavit also not convincing and satisfactory one. The management itself had admitted in this affidavit that the company was functioned even after the closure in the year 2001 with skeleton staff. Hence, it cannot say that it did not know the filing of the case. The petitioner may have some valid grounds in the main

industrial dispute, but it had missed the bus. Since the delay excuse petition filed in I.A.355/13 is dismissed, this petition is also dismissed."

Therefore, the learned counsel for the second respondent/workman would urge this Court to dismiss the writ petition as devoid of merits.

14. This Court has given its anxious consideration to the rival submissions and also to the pleadings and materials placed on record.

15. Firstly, it has to be seen that there is considerable force in the contention put forth by the learned counsel for the petitioner that the award passed by the Labour Court in I.D.No.277 of 2006 dated 1.12.2009 is a cryptic and non-speaking one and the same is contrary to law, particularly as held by the learned Division Bench of this Court, which is cited supra. However, this Court has also to take into consideration the plight of the workman who had the benefit of the award in his favour which award was passed as early as in 2009. Although some kind of explanation was forth coming on behalf of the petitioner/management for not appearing before the Labour Court, that explanation was not convincing enough to straight away allow the writ petitions. At the same time, the petitioner/management has also to be given a final opportunity to demonstrate their case before the Labour Court and defend their position vis-a-vis the claim of the second respondent/workman. In the circumstances, there has to be equitable solution to the satisfaction of both the petitioner/management and the second respondent/workman while taking a decision in respect of both the writ petitions.

16. In the above circumstances, this Court is of the view that the second respondent/workman, having obtained a favourable order way back in 2009, cannot remain with empty hands when the plea of the petitioner/management is to be accepted before this Court. Therefore, in fitness of things, this Court is of the view that both the Writ Petitions can be allowed, by setting aside the impugned award dated 1.12.2009 in I.D.No.277 of 2006 as well as impugned order dated 14.11.2013 in I.A.No.356 of 2012 subject to the condition that the second respondent/workman is permitted to withdraw Rs.1,00,000/- from the deposit made by the petitioner to the credit of the I.D. before the Labour Court.

17. This Court is also conscious of the fact that since the impugned award is being set aside, the amount which is deposited to the credit of the I.D., shall automatically revert back to

the petitioner/management, but at the same time, considering the prejudice suffered by the second respondent/workman for having to face trial before the Court once again after a lapse of several years, this order is passed by this Court in the facts and circumstances.

18. For the foregoing reasons, the Writ Petitions are allowed and the impugned award dated 1.12.2009 passed in I.D.No.277 of 2006 as well as the impugned order dated 14.11.2013 made in I.A.No.356 of 2012 are set aside. The second respondent/workman is permitted to withdraw a further Rs.1,00,000/- (Rupees one lakh) from the deposit made by the petitioner management to the credit of the I.D. before the Labour Court. The Labour Court is directed to take up the industrial dispute and dispose of the same in accordance with law, within a period of six months from the date of receipt of a copy of this order, after affording fair opportunities both the petitioner/management and the second respondent/workman. After withdrawal of the amount by the second respondent/workman as directed, the balance amount shall remain in deposit itself, till the award is passed by the Labour Court. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

Suk

To

III Additional Judge, Labour Court,
Chennai.

+2cc to Mr.V.P.Raman, Advocate Sr. 64563

+1cc to M/S.T.Fennwalter Associates, Advocate Sr. 64717

W.P.Nos.34214 & 34215 of 2013

SCD(CO)
VR(13/09/2017)