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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.19060 of 2003 and

W.P.M.P.No.23865 of 2003

A.A.226, Modakurichi Primary Agri.
Co.op.Bank ltd.,
Rep. by its Special Officer,
Modakurichi Post,
Erode Taluk,
Erode District.

... Petitioner

Vs

1. The Presiding Officer,
Labour Court,
Salem.

2. K.Subramaniam

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorarified mandamus, calling for the records relating to the impugned award in I.D.No.64/2000, dated 12.10.2001 passed by the Labour Court, Salem (1st respondent herein) and quash the same.

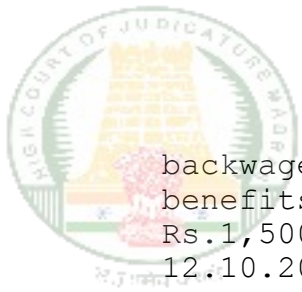
For Petitioner : Mr.C.Prakasam

For Respondents : Mr.N.Umapathi for R2

O R D E R

The second respondent herein while working as a Secretary of the petitioner's Bank, was issued with the Charge Memo dated 19.08.1998, based on which disciplinary action was taken against him. During the course of an enquiry, the charges were held to be proved. Subsequently, the second respondent was dismissed from the services on 27.07.1999.

2. Pursuant to the order of dismissal, the second respondent had raised an industrial dispute under Section 2-A (2) of the Industrial Disputes Act, 1947, in I.D.No.64/2000 before the Labour Court, Salem. Though the petitioner was represented by the counsel, the Labour Court had set the herein ex-parte for their non appearance. Ex-parte award came to be passed on 12.10.2001, by directing reinstatement of the second respondent into service with



backwages, continuity of service along with other attendant benefits. The petitioner herein was also directed to pay a sum of Rs.1,500/- as costs to the second respondent. The said award dated 12.10.2001, is under challenge in the present writ petition.

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3. The learned counsel for the petitioner submitted that the Labour Court is not justified in passing the ex-parte award without affording an opportunity to the petitioner's Bank to represent their case. According to the learned counsel, the Labour Court had not gone into the evidences and statement of the witnesses, adduced before the enquiry officer and does not disclose the reasons for the rejection of the conclusions arrived at during the domestic enquiry and therefore, sought for set aside of the award of the Labour Court.

4. The learned counsel for the second respondent on the other hand submitted that the petitioner herein was duly represented by the learned counsel and they were set ex-parte, since the petitioner was absent. Even otherwise, the award came to be passed on 12.10.2001 and the petitioner herein had not taken any steps for the award to be set aside. Apart from that, the present writ petition has been filed on 09.07.2003 which is more than two years and there is absolutely not question as to why, there is a delay in filing the present writ petition. Hence, the learned counsel deserves for dismissal of the on the ground of laches. Apart from this, the learned counsel also submitted that pursuant to the charges, the second respondent herein was placed under suspension. During the suspension, he was not paid the subsistence allowance from the date of suspension to the date of termination. In view of the non payment of the subsistence allowance, the entire proceedings will be vitiated and therefore sought for rejection of the writ petition.

5. I have given careful consideration to the submissions made by the respective counsels.

6. As rightly pointed out by the learned counsel for the second respondent, the award came to be passed on 12.10.2001, directing reinstatement of the second respondent with all attendant benefits. Subsequently, no steps have been taken by the petitioner herein to set aside the award and the writ petition has not been filed at the earliest point of time. Since the award itself was an exparte award passed on 12.10.2001 in which one of the main finding was that the petitioner has not paid the subsistence allowance from the date of suspension to the date of termination. The petitioner herein is questioning that portion of the finding of the award in the present writ petition. There is no ground raised in the present writ petition substantiating that the petitioner has paid the subsistence allowance to the second respondent during the suspension period. It is a settled law that when the subsistence allowance is not paid during the suspension period, further proceedings pursuant to the non payment of the subsistence allowances shall be vitiated. Apart from this ground, it is seen that there is no justification pleaded in the writ petition for the



delay in approaching this Court after about two years from the date of award. On the ground of laches also, the writ petition deserves no indulgence.

7. For all the foregoing reasons, I do not find any merits in the Writ petition. Accordingly, the writ petition stands dismissed.

8. At this juncture, the learned counsel for the second respondent submitted that the second respondent had reached the age of superannuation and that he would be entitled for all the monetary benefits which accrued in his favour, pursuant to the award of the Labour Court in I.D.No.64/2000.

9. In this connection, the second respondent is granted liberty to approach the petitioner herein with an appropriate representation, seeking for disbursing the monetary benefits which may be lying in his account. On receipt of such representation, the petitioner herein shall disburse the same within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vum

To

The Presiding Officer,
Labour Court,
Salem.

+1 C.C. to Mr.C.Prakasam Advocate SR.NO. 38364/19

+1 C.C. to Mr.K.V.Shanmuganathan Advocate SR.NO. 38694/19

W.P.No.19060 of 2003 and
W.P.M.P.No.23865 of 2003

NA (CO)
VS 31.05.2019