



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.03.2017
CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WEB COPY

W.P.(MD)No.15641 of 2013

Chidambarasamy

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tiruchirappalli.

2.The Management of Modern Cotton Yarn Spineer Limited,
Manavasi,
Karur.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the entire records pursuant to the order passed in I.A.No.129 of 2010 in I.D.No.63 of 2008 order dated 19.10.2012 on the file of the 1st Respondent and quash the same and consequently direct the 1st Respondent to dispose the I.D.No.63 of 2008 on merits.

For Petitioner	: Mr.K.Harikaran
For 1 st Respondent	: Court
For 2 nd Respondent	: Ms.P.Malini for M/s.T.S.Gopalan & Co.,

O R D E R

The prayer in the writ petition is for a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the order dated 19.10.2012 passed in I.A.No.129 of 2010 in I.D.No.63 of 2008 by the 1st Respondent and quash the same and consequently directing the 1st Respondent to dispose the I.D.No.63 of 2008 on merits.

2. The case of the petitioner is that the petitioner has raised an Industrial Dispute regarding the reinstatement of one of its member worker. The said Industrial Dispute had been numbered as I.D.No.63 of 2008 on the file of the first respondent. The said I.D had been dismissed for default on 21.07.2009. On that date, the petitioner's representative had not appeared before the Court. Thereafter, the petitioner had filed the present application that is I.A.No.129/2010 before the first respondent Court with a prayer to condone the delay of 155 days in filing the petition to restore the I.D., which was dismissed for default. The said application in

<https://hcprcscs.courts.gov.in/2013/03/03/> has been dismissed by the impugned order dated 19.10.2012 of the first respondent. Challenging the same, the present Writ Petition has been filed.



3. Heard both sides.

4. The learned counsel appearing for the petitioner would submit that the petitioner's representative could not make his presence on the date when the Industrial Dispute was posted for hearing on 21.07.2009, in view of his urgent trade union activities/assignment. Only thereafter, it became known to him that the Industrial Dispute was dismissed for default on 21.07.2009. Thereafter, when the petitioner had filed the present application to condone the delay of 155 days for restoration of the dismissed Industrial Dispute. The said application should have been entertained and the delay could have been condoned by the first respondent, as otherwise the petitioner would lose the chance of getting the Industrial Dispute raised before the Labour Court decided on merits. Further, the first respondent Labour Court has dismissed the application filed by the petitioner on the ground that the ex parte award passed on 21.07.2009 has been published in the Gazette on 14.12.2009; therefore, it became enforceable and only if the application is filed within 30 days from the date of publication the same can be entertained and admittedly the application was filed only after 30 days and therefore, the Labour Court has become *functus officio* and it has no jurisdiction to deal with the same and accordingly it was dismissed.

5. In this regard, the learned counsel appearing for the petitioner would rely upon the Division Bench judgment of this Court in W.P.(MD) No.1046 of 2012 dated 01.12.2015, in the matter of L.Amarnath v. The Presiding Officer, Labour Court, Trichy. In the said judgment the learned counsel appearing for the petitioner had relied upon the following paragraphs:

"7. There are two issues. The first as to whether the Labour Court has the power to set aside an ex parte award, after the publication of the award in the Gazette. In Sangham Tape Company v. Hans Raj reported in 2004-III-LLJ-1141, the Honourable Supreme Court held that the Industrial Court will have jurisdiction to set aside an ex parte award, provided an application is filed before the expiry of 30 days from the publication thereof. This was in view of the Section 17-A of the Industrial Dispute Act, 1947.

8. However, it is contended by Mr.S.Arunachalam, learned Counsel for the appellant that the Honourable Supreme Court was concerned in Sangham Tape Company v. Hans Raj reported in 2004-III-LLJ-1141 with a case which is governed by the Industrial Disputes (Central) Rules, 1957, where there is no provision. But insofar as the State of Tamil



Nadu is concerned, there is a proviso to Rule 48 (2) of the Tamil Nadu Industrial Disputes Rules, 1958.

9. Moreover, in Radhakrishna Mani Tripathi v. L.H. Patel reported in (2009) 2 Supreme Court Cases 81, the Honourable Supreme Court made a reference to Industrial Disputes (Bombay) Rules, 1957, which was similar to the Tamil Nadu Industrial Disputes Rules, 1958 and held that the Labour Court would have the power to set aside the exparte award. The decision in Grindlays Bank Ltd., v. Central Government Industrial Tribunal reported in 1980 Supp SCC 420 : 1981 SCC (L&S) 309, which formed the basis for Sangham Tape Company case, was distinguished in Radhakrishna Mani Tripathi case.

10. Even if we discard the question as to whether the Labour Court would have jurisdiction to entertain an application beyond 30 days of publication of the award, the appellant has to succeed on yet another ground. The award passed by the Labour Court, dismissing the claim petition of the appellant for non-prosecution, is not actually an award in the eye of law.

11. Rule 48(1) of the Tamil Nadu Industrial Disputes Rules, 1958, mandates that if any party to the proceedings before the Labour Court fails to attend the proceedings, the Court or Tribunal may proceed as if the party has duly attended or had been represented. In other words, the Court ought to have gone into the merits of the case and passed an award. Therefore, the original award dated 12.12.2008 itself is not an award in the eye of law and de hors the first question, this was also liable to be set aside.

13. In view of the above, the writ appeal is allowed and the order of the learned Judge is set aside. The original award of the Labour Court is also set aside. The Labour Court is directed to take up the Industrial Dispute for fresh adjudication in accordance with law. The Labour Court shall endeavour to dispose of the matter within four months from the date of receipt of a copy of this judgment. No costs."

6. By relying upon the said Division Bench judgment, the learned counsel appearing for the petitioner would submit that in view of the said decision, the first respondent Labour Court would



not become *functus officio* merely because 30 days period given, within which the application was expected to be filed to set aside the *exparte* award, was lapsed and even beyond the 30 days period if an application is filed with appropriate reasons it can be entertained. Here in this case, according to the learned counsel appearing for the petitioner, since the representative of the Labour Union was not able to attend the Labour Court on the particular date, because of the pressing Union activities, the same should have been accepted and the delay could have been condoned, instead the Labour Court has rejected the application on the ground that the reasons adduced on behalf of the petitioner cannot be accepted and also mainly on the ground that the Court has become *functus officio*. Both the reasons adduced by the Labour Court are untenable and liable to be interfered with.

7. Per contra, the learned counsel appearing for the second respondent relied upon various judgments of the Hon'ble Apex Court as well as this Court, which are listed hereunder:

- (i) Grindlays Bank v. CGIT [1980 (Supp) SCC 420].
- (ii) General Manager Telecom v. A.Srinivasa Rao & Others [1997 (8) SCC 767].
- (iii) Anil Sood v. Presiding Officer [2001 (10) SCC 534].
- (iv) Sangam Tape Company v. Hans Raj [2005 (9) SCC 331].
- (v) Management Khadi & Village Industries Board v. P. Subramaniam [W.A.No.913 of 2008 : Order dated 27.08.2008].
- (vi) Radhakrishna Mani Tripathi v. L.H. Patel & Another [2009 (2) SCC 81].
- (vii) Haryana Suraj Malting Ltd. v. Phool Chand [2012 (8) SCC 579].
- (viii) K.Manoharan v. Presiding & Another [W.P.(MD) No.1395 of 2011 : Order Dated 06.12.2013].

8. The learned counsel appearing for the second respondent would submit that in view of number of pronouncements as has been quoted above even the issue as to whether the Labour Court would become *functus officio* after 30 days period from the date of publication of the award, has been referred to a Larger Bench for an authoritative pronouncement, and as on date the latest pronouncement would be that the Labour Court certainly would become *functus officio*. Therefore, in this case, since, admittedly the award was published on 14.12.2009 and the petitioner has filed application on 22.01.2010, after a delay of 155 days, the first respondent Labour Court has rightly rejected to entertain the application for the reason that it has become *functus officio* in view of that the award has been published as early as on 14.12.2009 and within 30 days petition has not been filed. Therefore, the learned counsel appearing for the second respondent would submit that there is absolutely no reason to interfere with the impugned order. The learned counsel appearing for the second respondent would also submit that even on merits the reason adduced by the petitioner for non-appearance on the particular



date on which award was passed *exparte* is totally unjustifiable because the representative of the Labour Union, who is the petitioner herein has not appeared on the particular date. According to them, the reason for non-appearance on that day was that they have some pressing other works, of course Union work. If that be the reason, the same cannot be an acceptable one for the delay on 155 days, that is the reason why the first respondent Labour Court has specifically rejected the said plea. If that is the only reason for delay that reason cannot be a sufficient one. Therefore, the impugned order was passed not only based on the Labour Court becoming *functus officio*, but also on the ground that reason adduced for the non-appearance on that day and the reason for non-filing objection are not sufficient one. Therefore, both on merits as well as on the power of the Labour Court, the order passed by the first respondent is fully justifiable and within the meaning of the provisions of the Industrial Disputes Act and therefore, the same requires no interference by this Court.

9.This Court has considered the said rival submissions.

10.The only issue that has to be decided in this writ petition is as to whether the Labour Court has got power to entertain the application to condone the delay of 155 days and to pass orders to restore the *exparte* order passed in the Industrial Dispute, when such an application to condone the delay of 155 days was admittedly filed beyond 30 days within the meaning of 17-B of the Industrial Disputes Act. Insofar as the said legal question is concerned, in the said judgment of the Division Bench in L.Amarnath (cited *supra*) as has been relied on by the learned counsel for the petitioner, the said issue has been considered and ultimately the Division Bench of this Court held that, in view of the Radhakrishna Mani Tripathi (cited *supra*), the Labour Court would have the power to set aside the award. The Division Bench of this Court also held that Rule 48(1) Tamil Nadu Industrial Disputes Rules, 1958 can also be pressed into service, which enables to file condone delay application to set aside the *exparte* award.

11.Insofar as the said issue raised by the learned counsel appearing for the second respondent regarding the power of the Labour Court to entertain such an application, if it is filed beyond 30 days period after the Publication of the Award, I had an earlier occasion, to consider the said issue in W.P.No.12830 of 2010 in the matter of the Management of M/s.Deena Paints Limited and others v. the Presiding Officer, Labour Court and another in the judgment dated 12.01.2017, wherein after having considered the aforesaid judgments, which are now relied on by the learned counsel appearing for the second respondent, I have given the following reasons to hold that the Labour Court has power to entertain such an application to condone delay even beyond 30 days period and the relevant portion of the said judgment of Mine can be usefully referred to hereunder:



"20. After having analysed all these judgments including the one where the learned Judge had passed the order in the matter of K. Manoharan (cited supra), this Court is of the view that in this issue an authoritative pronouncement has not yet been made. Even the law laid down in the Grindlays Bank Ltd. (supra) has been distinguished in Radhakrishna Mani Tripathi case (supra) and after having noted the conflicting decisions in Sangham Tape Co. case (supra) and Radhakrishna Mani Tripathi case (supra), the Hon'ble Supreme Court in Haryana Suraj Malting Ltd. (supra) referred the issue to the Larger Bench of the Hon'ble Apex Court and the same has been reiterated by the Ram Shiroman Mishra case (supra). Therefore, as on date there are two different decisions of the Hon'ble Apex Court. One is that petition to set aside can be entertained beyond the period of 30 days of the award inspite of Section 17-A of the Act. The other view is that such a petition can never be entertained in view of Section 17-A of the Act, where the award become operational on the expiry of 30 days from the publication. Once the award become operational, the same cannot be tinkered as the Court become functus officio, is another view.

21. Here in this case, reasons have been adduced by the petitioners for non-appearing on the particular date when the petitioners were set ex-parte that, too on medical ground, thereafter on receipt of communication that award has been passed against the petitioners, immediately petition was filed to set aside the ex-parte award, of course with a delay of 127 days, for which separate petition was also filed. In this context Rule 48 of the Rules, in the opinion of this Court, can be employed to resolve this issue. Under Rule 48(1) ex-parte proceedings can be issued by the Labour Court. Under Rule 48(2) for sufficient cause, the Labour Court or Industrial Tribunal can set aside the ex-parte decision voluntarily or on an application made within 15 days of the ex-parte award. However, the proviso to sub-rule 2 to Rule 48 says if an application is made after the said period of 15 days and if the application satisfies the Board/Court/the Labour Court/Tribunal/ Arbitrator as the case may be that he had sufficient cause for not preferring the application within time, then the petition can be entertained beyond 15 days time. Once an application is entertainable beyond 15 days time under the proviso to Rule 48(2) and since there is no express provision that such an application entertained must be within 30 days from the date of publication of the award

Section 17-A of the Act, this Court is of the considered view that such application can be entertained with a condone delay petition even beyond 30 days period,



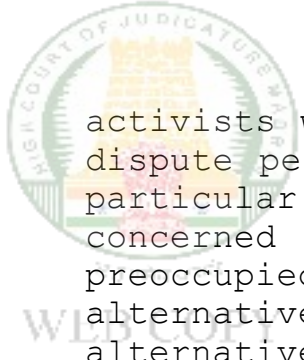
provided, if reason is given to the satisfaction of the Labour Court/ Industrial Tribunal concerned.

22.If Section 17-A of the Act as well as Rule 48 of the Rules are read together by employing the theory of harmonious construction certainly the view expressed by the Hon'ble Apex Court in Radhakrishna Mani Tripathi case (supra) alone could be possible view. In this regard the decision in Radhakrishna Mani Tripathi case, where their Lordships compared Section 17-A of the Act as well as Section 26(2) of the Industrial Disputes (Bombay) Rules, can be taken as a precedent for cases of this nature as the present issue also squarely falls under that category. Therefore, in view of the said factors and the decisions of the Hon'ble Apex Court, this Court is of the considered view that the petition filed to condone the delay of 127 days in filing the petition to set aside exparte award could have been entertained by the first respondent Labour Court by invoking the aforesaid Rule 48 (2) of the Rules and therefore, in that view of the matter, the present impugned order rejecting the said application on the ground that the first respondent Labour Court has become functus officio beyond 30 days from the date of publication as envisaged under Section 17-A of the Act, is erroneous and therefore, this Court has no hesitation to set aside the said impugned order passed by the first respondent and is remanding the matter for entertaining the said application and to decide the same on merits.

23.In the result, the writ petition is allowed. The impugned order made in I.P.No.364 of 2007 in I.D.No.187 of 2003 dated 11.04.2008 is set aside and the first respondent Labour Court is directed to take up the application made by the petitioner in I.P.No.364 of 2007 on file and to decide the same on merits and in accordance with law within a period of 3 months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed."

On the same line, the Division Bench also in the judgment, cited supra, as relied on by the learned counsel appearing for the petitioner, has taken a similar view. In view of the said judgment which has been issued after considering the pronouncements made by the Hon'ble Apex Court, which are relied on by the learned counsel appearing for the second respondent, this Court is of the considered view that the application filed by the petitioner with the delay of 155 days could have been very well entertained by the first respondent Labour Court.

<https://hcservices.ecourts.gov.in/Inservice> 12.07.2016 for the reason assigned by the petitioner for non-appearance on that date is concerned, though the said reason appeared to be trivial in nature, normally, a Trade Union



activists would be looking after the issues relating to the Labour dispute pertaining to the members of the Union. Therefore, on the particular date when the case was listed before the Labour Court concerned representative of the petitioner Union could have been preoccupied in attending any pressing work. However, atleast some alternative arrangement could have been made. Without making any alternative arrangement simply restraining themselves from attending the Court and after an exparte order is passed coming to the Court belatedly with a condone delay petition cannot be automatically accepted. However, in order to meet this kind situation, as unless the condone delay petition is entertained and the delay is condoned, exparte award passed by the Labour Court cannot be restored and, by this the worker, whose valuable right would be at stake, unless the Labour Court decide the industrial dispute raised before it on merits. The same ought to have been entertained. In this regard the findings given by the Division Bench judgment cited supra can very well be pressed into service, as the exparte award passed by the Labour Court, cannot be an award passed within the meaning of Industrial Disputes Act. If any petition is filed to restore the exparte award or to set aside the same, the same should have been entertained and the Labour Court must have explored the possibility of deciding the Industrial Dispute. Therefore, for all these reasons, even though reason for non-appearance, as adduced by the petitioner, cannot be taken as an effective reason for entertaining the application to condone the delay, the same could have been taken in terms of cost.

13. Therefore, in the circumstances, this Court is of the view that even on merits, the non-entertaining of the application or rejecting the same to condone the delay filed by the petitioner cannot be accepted and therefore, the impugned order is liable to be interfered with. Accordingly, the same is set aside.

14. In the result, the Writ Petition is allowed and the impugned order in I.A.No.129 of 2010 in I.D.No.63 of 2008 dated 19.10.2012 on the file of the 1st Respondent, is set aside and the first respondent Labour Court is directed to take up the application made by the petitioner on file and decide the same on merits and in accordance with law with a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(Protocol)

/True Copy/

Sub-Assistant Registrar

To

The Presiding Officer, Labour Court, Tiruchirappalli.

+One cc to Mr.K.Hariharan, Advocate, SR.No.12341