



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2017

CORAM :

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THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.(MD)No.8810 of 2013

C.Francis Xavier

... Petitioner

vs.

1)The Presiding Officer,
Labour Court, Trichy

2) S.Soundararajan

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Order in I.A.No.133/2010 dated 12.10.2012 by the 1st respondent and quash the same and consequently direct the 1st respondent to restore the case in I.D.No.52/2013 and decide the case on merits after giving sufficient opportunity to the petitioner.

For Petitioner

: Mr.G.M.Xavier

For Respondents 2

: Mr. Nawaz Khan for

M/s.Ajmal Associates

ORDER

The prayer in the writ petition is for a writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Order passed by the first respondent in I.A.No.133/2010 dated 12.10.2012 and quash the same and consequently direct the 1st respondent to restore the case in I.D.No.52/2013 and decide the case on merits after giving sufficient opportunity to the petitioner.

2.The short facts leading to the filing of the writ petition is that the petitioner has claimed that he was working at the 2nd respondent Hotel from 1979. After having worked for more than 20 years, the petitioner was dismissed from service on 07.02.2001. Against the order of dismissal, the petitioner had

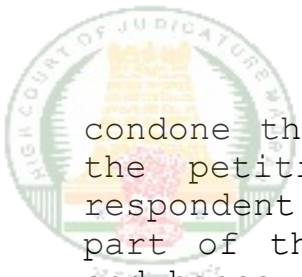


raised an industrial dispute in ID No.52/2013 before the first respondent Labour Court. The petitioner had engaged a counsel and the said ID was posted for hearing on 06.06.2008. On that date, the petitioner was present, however, his counsel did not present. Therefore, what was transpired in the Court, when the case was called, was not aware of by the petitioner, as he did not understand what has been said, when the case was called. Therefore, he left on that day without meeting his counsel. Thereafter, he has received an ex-parte order from the first respondent Court on 17.01.2009. Only thereafter, he came to know that the said ID was dismissed for default. Thereafter only, the petitioner approached his counsel and a petition to restore the ID was filed and since there were delay, the petitioner had also filed IA No.133/2010 to condone the delay of 295 days in filing the IA for restoration and the Said IA No.133/2010 has been dismissed by the present impugned order dated 12.10.2012 by the first respondent. Challenging the same, the petitioner has come out with this present writ petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent.

4. The learned counsel for the petitioner would contend that the petitioner had been working at the 2nd respondent Hotel for more than two decades and suddenly he was dismissed. Therefore, a valid ID was raised by him and the same, instead of being decided by the first respondent, unfortunately, has been dismissed for default, in spite of the presence of the petitioner.

5. Per contra, the learned counsel for the 2nd respondent would contend that on the date of hearing, ie., on 06.06.2008, no one was present on behalf of the petitioner, ie., neither the petitioner nor his counsel and therefore, the first respondent has dismissed the said ID for default. If at all the petitioner had present in the Court, immediately, he would have responded or atleast, if the petitioner had been not in a position to what had been transpired in the Court during the said date, immediately on that day or the next day, he would have contacted his counsel, and the petitioner would have made arrangement to file a petition to restore the ID immediately. However, in this case, the petitioner had filed a petition to restore the ID, after a long delay of 295 days and there is no acceptable reason adduced by the petitioner in the affidavit filed in support of the IA. Therefore, having considered the said facts and circumstances only, the first respondent has passed the rejection order, which is impugned herein. In the impugned order, the first respondent has clearly stated that normally, the labour Court would take a lenient view in this kind of matter in favour of the workman. However, in this case, as no reason whatsoever has been given on behalf of the petitioner, the first respondent labour Court has taken a decision in favour of the Management and dismissed the IA by refusing to



condone the huge delay without assigning any reason on behalf of the petitioner. Therefore, the learned counsel for the 2nd respondent would submit that there is every justification on the part of the first respondent to pass the present impugned order and hence, it requires no interference from this Court.

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6. This Court has considered the rival submissions made by the learned counsel for the respective parties.

7. As has been stated by the first respondent in the very impugned order itself, the Court has said that it would take normally a liberal view, considering the claim of the workman, as the labour law is enacted as a Social Welfare legislation to protect the interest of the labour community. Here, in this case on hand, the petitioner claimed that he had been working at the 2nd respondent Hotel for more than two decades and all of a sudden, he was dismissed from service. Therefore, he raised an industrial dispute before the first respondent for adjudication. Therefore, the relevant merit of the issue raised in the ID has to be decided on merits. Even though the petitioner claimed that he was present on the date of hearing, the same has been disputed by the 2nd respondent. Be that as it may, once the petitioner has come out with proper petition to condone the delay and reasons have been stated that he was not informed the decision taken on 06.06.2008, as the petitioner, even though claimed to be present on the said date, he was not in a position to know what had been transpired on that day, when that being so, the petitioner would be naturally in a position to know the fate of the case only on receipt of the orders and only thereafter, he had made arrangement to file the IA. Therefore, certainly, there would be a huge delay in that process. When a workman has come out with proper petition to condone the delay, as has been pointed out by the first respondent in the impugned order itself, a liberal or lenient view could have been taken by the first respondent to condone the delay and the petition could have been entertained and the ID can be restored for taking up the same to decide on merits. Instead, the first respondent has rejected the application to condone the delay. Resultantly, the very ID itself has lost its significance and the very issue raised by the petitioner for the decision of the first respondent has become redundant. Therefore, this Court is of the considered view that the ID should be heard on merits and for the said purpose, the petition filed by the workman to condone the delay and consequently to restore the IA have to be entertained and to be accepted.

8. In that view of the matter, the impugned order is set aside and the matter is remitted back to the first respondent for reconsideration by which, the application in IA No.133/2010 shall be accepted and the ID shall be restored on file and the same shall



be decided on merits. It is needless to state that once the ID is restored, pursuant to the orders of this Court, the petitioner herein shall cooperate for the disposal of the ID by appearing in each and every hearing without fail.

9. With these directions, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The Presiding Officer, Labour Court, Trichy

+1cc to Ajmal Associates in SR. No.1040
+1cc to M/s.G.M.XAVIER Advocate in SR. No.739

RR/
JS/CM/MSA/22.02.2017/4P-4C

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