

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

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THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.23366 of 2017 &
W.M.P.No.24461 of 2017

The Management of
Santhosh Maize & Industries Limited
Santhosh Nagar,
Mangalapuram Post, Rasipuram Taluk,
Namakkal District.Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Salem.

2.Babu Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ or order or direction, particularly in the nature of writ of certiorari calling for the entire records relating to the order dated 06.07.2017 in I.A.No.109 of 2017 in I.A.No.238 of 2016 in I.D.No.18 of 2012 on the file of the Labour Court, Salem quash the same.

For Petitioner : Mr.D.Shivakumaran

For Respondent 2 : Mr.R.M.D.Nazarullah

WEB COPY

ORDER

The order passed by the labour court in I.A.No.109 of 2017 in I.A.No.238 of 2016 in I.D.No.18 of 2012 dated 06.11.2017 on the file of the Labour Court is under challenge in this writ petition.

2. The learned counsel appearing on behalf of the writ petitioner states that the petitioner factory had employed the second respondent as a workman in the L.G.Division. On account of certain allegation of theft, the second respondent/workman was terminated from service and challenging the same, the

dispute was raised in I.D.No.18 of 2012. During the pendency of the industrial dispute, the writ petitioner filed an Interlocutory application in I.A.No.238 of 2016 for amending the counter statement, so as to rectify the typing error occurred in the counter statement. The learned counsel for the petitioner states that at the time of typing of the counter affidavit certain mistakes were committed by the typist and the same deserves to be corrected. For this purpose alone, the Interlocutory Application in I.A.No.238 of 2016 was filed.

3. The said application was dismissed for default on 30.06.2016. The non-appearance of the counsel/ authorised representative on that day was not wanton. However, there was a delay of 132 days in filing restoration petition in I.A.No.109 of 2017. The condone delay petition was dismissed by the labour Court, Salem, on the ground that the writ petitioner management was not vigilant in pursuing the matter and there was a long delay, even in filing the petition to correct the errors in the counter statement.

4. The learned counsel appearing on behalf of the second respondent/workman vehemently opposed the contentions of the petitioner by stating that there was an enormous delay on the part of the petitioner management, even in pursuing the matter. The workman is being harassed by keeping the matter pending before the Labour Court, Salem for years together. In spite of the knowledge in respect of the ex parte order which was passed on 30.06.2016, there was delay of 132 days in filing the petition to condone the delay in setting aside the ex parte order, therefore no leniency is to be shown in the present petition.

5. Considering the arguments as advanced by the learned counsels, this Court is of an opinion that dispute raised in relation to termination of the second respondent/workman, undoubtedly, the issues involved in the case ought to be adjudicated in all respects by conducting trial. This part, opportunities to the parties are also to be provided for an effective adjudication before the Labour Court, Salem. Undoubtedly, there is a delay on the part of the writ petitioner in pursuing the matter promptly. The delay caused is due to the negligence on the part of the parties concerned. May that it be, the cause of the delay on the part of the counsel/authorised representative, the parties should not made to suffer. Sometimes it so happens that the authorised representative/counsel are not diligent in pursuing the matters, before the labour court. However, the parties should not made to suffer on account of such non-diligency.

6. In this view of the matter, this Court is of an opinion that the present writ petition shall be considered by

imposing cost and to ensure that an effective adjudication is done in the industrial dispute raised. Contrarily, if the writ petition is dismissed, there is no opportunity for the parties to adjudicate the issues on merits, before the Labour Court. Thus, this Court is of an opinion that writ petition deserves to be considered, ofcourse by imposing the cost amount of Rs.10,000/-.

7. Accordingly the order passed by the Labour Court, Salem dated 06.07.2017 in I.A.No.109 of 2017 in I.A.No.238 of 2016 in I.D.No.18 of 2012 is quashed and the Labour Court, Salem is directed to proceed with the adjudication of the matter on merits. The petitioner is directed to pay the cost amount of Rs.10,000/- directly to the workman by way of Demand Draft within two weeks from the date of receipt of a copy of this Order. The order of termination is issued during the year 2011 and the dispute was raised in the year 2012. Thus the Labour Court, Salem is requested to expedite the matter as early as possible and dispose of the same.

8. With the above observations, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Presiding Officer,
Labour Court,
Salem.

+1 C.C. to MR.D.SHIVAKUMARAN Advocate SR.NO. 29478/18

W.P.No.23366 of 2017

NA (CO)

VS 16.05.2018