

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1532 of 2013 and
MP.No.1 of 2013

The Management of Wentworth Estate
Cherambady Post
Pandalur Taluk, Nilgiris. ... Appellant/Petitioner

-Vs-

- 1.The Secretary
Nilgiris District Estate Workers Union
INTUC, Gudalur.
- 2.The Labour Court,
Coimbatore. ... Respondents/Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P No.12932 of 2013 dated 13.06.2013.

Prayer in WP.NO.12932/2013:

Writ Petition Under Article 226 of the Constitution of India, praying for the issue of a Writ of certiorari, calling for the records on the file of the 2nd respondent and to quash the impugned order dated 13.2.2013 made in I.A.No.499 of 2011 in I.D.No.299 of 2007 passed by the 2nd respondent.

For Appellants : Mr.E.K.Nanda Kumar
Senior Counsel for
Mr.M.Vijayan
for M/s.King and Partridge

For R1 : No appearance

J U D G M E N T

[Judgment of the Court was delivered by
K.K. SASIDHARAN, J.]

This intra court appeal is directed against the order dated 13 June 2013 in W.P.No.12932 of 2013, whereby and where under, the learned single Judge dismissed the writ petition filed by the appellant challenging the order, dated 13 February 2013 on the file of the Labour Court, Coimbatore, condoning the delay of 859 days in filing the application to set aside the ex parte Award.

The Facts

2. The first respondent raised a dispute with regard to the payment of wages for the employees of the Estate owned by the appellant for the period from 2000 to 2006. The dispute was referred to the Labour Court for adjudication. Before the Labour Court, the appellant as well as the first respondent failed to appear and the same resulted in closing the reference.

3. The first respondent, long thereafter, and more particularly, after a period of 859 days filed an application in I.A.No.499 of 2011 to set aside the Award dated 20 March 2009.

4. The first respondent in the affidavit filed in support of the interlocutory application contended that there was no communication between the Union and the counsel and the same resulted in their absence on the date of hearing.

5. The application was opposed by the appellant by filing counter affidavit.

6. The Labour Court opined that sufficient reasons were not given for condoning the delay. Even thereafter, the Labour Court allowed the application with an observation that one more opportunity should be given to the Union.

7. The order dated 13 February 2013 condoning the delay was taken up by the appellant before the Writ Court in W.P.No.12932 of 2013.

8. The learned single Judge dismissed the writ petition with an observation that the Labour Court is having every authority to condone the delay, in case sufficient reasons are given. The said order is under challenge at the instance of the appellant.

Submissions

9. Mr.E.K.Nanda Kumar, learned Senior Counsel for the appellant contended that the Labour Court having found that there were no reasons, much less justifiable reasons given by the first respondent for condoning the delay was not correct in

giving an opportunity to contest the matter by condoning the delay. According to the learned Senior Counsel, the matter relates to the year 2002 - 2006 and the order reviving the litigation would cause unrest in the factory. The learned Senior Counsel therefore contended that the Labour Court was not correct in setting aside the Award closing the reference.

10. None appeared on behalf of the first respondent.

Discussion

11. The dispute raised by the first respondent was referred to the Labour Court by the State Government. The Labour Court framed the issue and posted the matter for evidence on 20 March 2009. It is a matter of record that neither the appellant nor the first respondent appeared before the Labour Court on the date of hearing. The Labour Court therefore closed the reference.

12. The first respondent filed an application to condone the delay in filing the application for restoring the industrial dispute in I.A.No.499 of 2011. There was a delay of 859 days in filing the miscellaneous petition.

13. The deponent in the application in I.A.No.499 of 2011 submitted that he was out of station on account of the union work and hence, failed to come over to Coimbatore to give evidence and to pursue the case on the date of hearing. No other reasons were given in the affidavit filed in support of the miscellaneous petition.

14. The Labour Court on a consideration of the reasons given by the first respondent agreed with the submissions made on behalf of the appellant that there was no valid reason given for condoning the delay. However, after saying so, the Labour Court allowed the application with an observation that one more opportunity should be given to the first respondent to prosecute the industrial dispute.

15. The order passed by the Labour Court contained a clear indication that the reasons given by the first respondent was not sufficient to condone the delay of 859 days. The Labour Court opined that it is the duty of the first respondent to contact the counsel for the purpose of prosecuting the industrial dispute. In case, the Labour Court was of the view that the reasons given were not sufficient to condone the delay, nothing prevented the Court from directing the first respondent to file a better affidavit explaining the reasons for the delay. There is no question of condoning the delay after concluding that there were no justifiable reasons given by the petitioner in the miscellaneous petition.

16. It is trite that the length of delay is not material. It is the reasons given by a party for condoning the delay alone is material. There should be at least minimum reasons given by the party for condoning the delay. However, in the affidavit filed in support of the miscellaneous petition, no such reasons were given by the first respondent. The reason that on account of union work, the office bearers of the Union failed to meet the counsel, cannot be a valid reason to condone the delay of 859 days.

17. The learned single Judge proceeded as if the Labour Court was expected to pass an order on merits and it was not proper to close the reference in the absence of the parties.

18. It is not a case of the first respondent remaining absent. Even the appellant was not present on the date of hearing. There were no materials available with the Labour Court to take a decision one way or the other. The Labour Court was expected to pass an Award by answering the issue referred for adjudication. The question of adjudication would arise only in case materials are produced by both the parties. Of course, it would be possible even to pass a reasoned order in case one of the party is present before the adjudicating authority. Since the parties were absent, the Labour Court was justified in closing the reference.

19. The issue itself relates to the year 2002 - 2006. There is no point in taking up the issue after a considerable period and more particularly, after the parties have lost interest in the matter. The litigation should attain finality at one point of time. This aspect was not considered by the learned single Judge. We are therefore of the view that the order passed by the learned single Judge deserves to be set aside.

Disposition

20. The order dated 13 February 2013 on the file of the Labour Court, Coimbatore is set aside. The related order passed by the learned single Judge dated 13 June 2013 is also set aside. The writ petition filed by the appellant in W.P.No.12932 of 2013 is allowed.

21. In the upshot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To
The Labour Court,
Coimbatore.

W.A No.1532 of 2013

ak(co)
nr 09/04/2018



WEB COPY