

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.02.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P. No.277 of 2018
& W.M.P.No.335 of 2018

The Management of NEPC Tea Garden,
Rep. by its Director,
Thirupathi Kumar Khemka,
S/o.Ravi Prakash Khemka,
Kavarkal Post, Valparai. .. Petitioner

Vs.

1.Labour Court,
Coimbatore.

2.Abdul Mazjith .. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the Labour Court, Coimbatore to dispose the I.A.No.1 of 2018 in I.D.No.76 of 2011 on the file of the Labour Court, Coimbatore.

For Petitioner : Mr.K.Sivakumar

ORDER

This Writ Petition has been filed seeking a writ of mandamus, to dispose of I.A.No.1 of 2018 in I.D.No.76 of 2011 on the file of the Labour Court, Coimbatore, to condone the delay of 690 days in filing the application to set aside the exparte award dated 04.02.2016 passed against the petitioner.

2. The petitioner is a Management of NEPC Tea Garden covered by the Plantation and Labour Act and the Rules made thereunder. Following the provisions of the said Act, the second respondent was appointed as Pharmacist and his last drawn salary was Rs.8,634/-. He was working continuously till January 2011 and his last drawn salary was Rs.13,132/-. As there were reports of the illegal activities against the second respondent made by the various workmen working in the estate and considering the seriousness of the matter, the second respondent was removed from service with effect from 12.02.2011.

3. The learned counsel appearing for the petitioner submitted that the second respondent is not a workman as defined under Section 2(s) of the Industrial Disputes Act. Hence, he cannot claim as workman nor raise any dispute before the Labour Court. He further submitted that as he was removed from service, he has raised Industrial Dispute and the Labour Court has proceeded exparte on 19.11.2011.

4. The learned counsel engaged by the petitioner was unable to appear before the Court due to heavy traffic jam in the Hills Road way to the Camp Court at Attakatti, Valparai, and they were also not able to file vakalath nama in time. However, after noticing the exparte award passed on 19.11.2011, an application has been filed under Section 5 of the Limitation Act to condone the delay of 690 days in filing the application to set aside the exparte award dated 04.02.2016. He has also submitted that taking advantage of the exparte award dated 04.02.2016, the second respondent has also filed Execution Petition and the same is pending before the Labour Court. Once the Execution Petition filed by the second respondent is allowed, I.A.No.1 of 2018 seeking condonation of delay of 690 days in filing the application to set aside the exparte award would become infructuous.

5. This Court is not able to find any merit in the Writ Petition. The reason is that when the Labour Court has proceeded exparte against the petitioner on 19.11.2011, the petitioner not only remained absent but also slept over this matter by not swiftly taking steps to set aside the exparte order, with huge delay, the respondent therein filed the application seeking condonation shows that there was a delay of 690 days in filing the said application. The reason stated therein is also bereft of any sufficient cause. Therefore, this Court is unable to see any good reason to condone the delay of 690 days in filing the application to set aside the exparte award. Accordingly, the Writ Petition fails and the same is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

sri

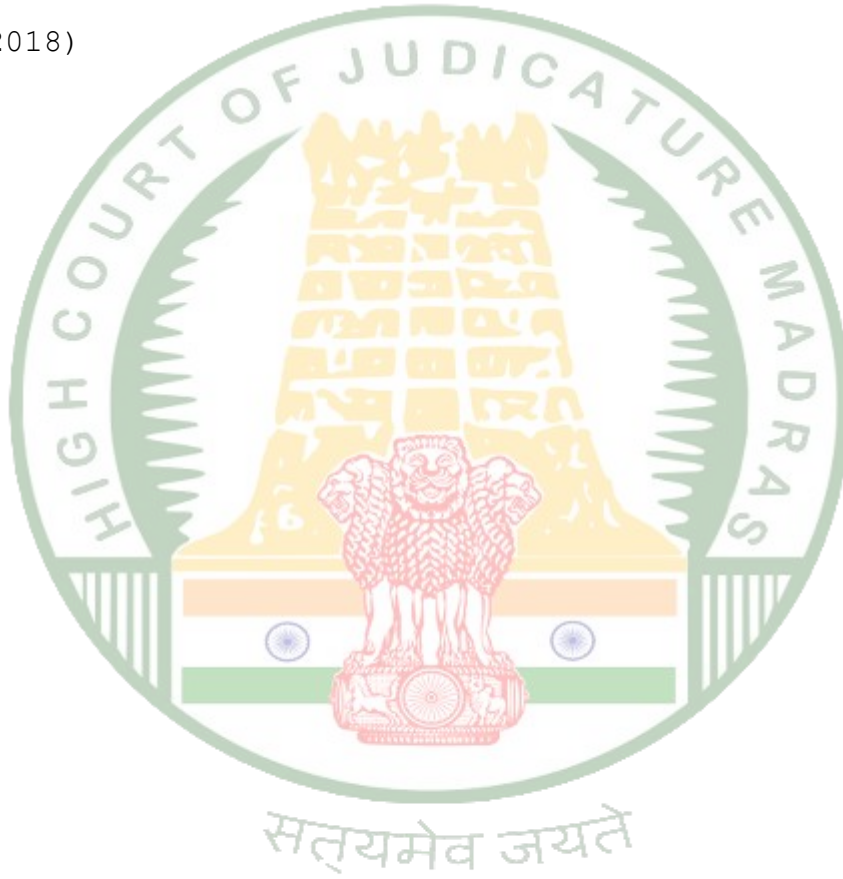
To

The Judge, Labour Court,
Coimbatore.

+1 CC to MR.K. Sivakumar, advocate sr 16366.

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SP (23/03/2018)



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