

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.04.2018

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

W.P.No.24289 of 2013

and

M.P.No.1 of 2013

The Management of
M/s.Woosu Automotive India Pvt.Ltd.
No.130, Narasingapuram
Perambakkam
Thiruvallur District. ..Petitioner

vs

1.Assistant Commissioner of Labour/
Office of the Deputy Commissioner of Labour-2,
DMS Campus, Teynampet, Chennai - 600 006.

2.A.Sivakumar

3.A.Ekambaram

4.J.Swamynathan

5.G.Selvam

6.S.Suresh .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to take on file the Review Petition filed by the petitioner herein, praying to review the exparte common order dated 29.05.2013 made in P.S.A.Nos.12 to 16 of 2013 for the purpose of cross examination, let in oral and documentary evidences on the side of the management.

For Petitioner : M/s.R.Prabhakaran

For Respondents : M/s.V.Kadhirvelu, Spl GP for R1

O R D E R

The relief sought for in this writ petition is for a direction to the 1st respondent to take on file the Review

petition filed by the petitioner herein, praying to review the exparte common order dated 29.05.2013 made in P.S.A.Nos.12 to 16 of 2013 for the purpose of cross examination, let in oral and documentary evidences on the side of the management.

2.The Management of M/s.Woosu Automotive India Private Limited filed the present writ petition on the ground that the main Appeal in P.S.A.Nos.12 to 16 of 2013 was decided by passing an exparte common order. The writ petitioner/Management preferred an application to set aside the exparte order and to permit the management to cross examine the witnesses and for let in oral and documentary evidences on the side of the Management. The application submitted to review the exparte order was returned by the 1st respondent in proceedings dated 01.07.2013 on the ground that the Hon'ble High Court passed an order in W.P.No.377 of 2013 dated 01.02.2013, directing the 1st respondent to dispose of P.S.A.Nos.12 to 16 of 2013 filed by the workmen within a period of eight weeks from the date of receipt of a copy of that order. Therefore, the P.S.A. was decided by passing an exparte order as per the directions of the Honb'le High Court and therefore, no review can be entertained in this regard.

3.This Court is of an opinion that the Hon'ble High Court earlier, simply directed the authorities to dispose of the Appeal and had not set aside the exparte order under the provisions of the Act and Rules. Section 5(7) of the Tamil Nadu Payment of Subsistence Allowance Rules 1981, which reads as follows:

"If any of the parties fail to appear on the specified date of hearing after due service of notice without sufficient cause, the application shall be determined as ex-parte and orders shall be passed on merits:

Provided that an order under this sub-rule may, on good cause being shown within thirty days of the said order, be reviewed and the application re-heard after giving not less than fourteen day's notice to the opposite party, of the date fixed for re-hearing of the application."

4.In the present case on hand, the petitioner/Management had submitted an application to review the exparte order within a period of thirty(30) days from the date of the order. Thus, there is no delay in respect of filing the application under the above said rules. This being the fact that the 1st respondent has to consider the application and pass orders on merits and in accordance with law. Every appeal has to be decided on its own merits and the same need not be rejected merely on certain technical grounds.

5.Admittedly, the 1st respondent had passed an exparte

order. Participation in an adjudication is most important and the issues are to be decided by providing an opportunity to all the parties concerned. Since an exparte order was passed and the writ petitioner/Management had preferred an application to set aside the exparte order within the time stipulated period under Section 5(7) of the Rules. There is no impediment in entertaining the application and set aside the exparte order.

6.In this view of the matter, the 1st respondent is directed to entertain the review application filed by the writ petitioner/Management to set aside the exparte order and permitting the writ petitioner/Management to cross examine the witnesses and let in oral and documentary evidences on the side of the Management and thereafter, take a decision on merits and in accordance with law and by providing an opportunity to all the parties concerned.

7.In this view of the matter, the 1st respondent is directed to take a decision on the review application filed by the writ petitioner and pass orders within a period of eight(8) weeks from the date of receipt of a copy of this order.

8.Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

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To

1.Assistant Commissioner of Labour/
Office of the Deputy Commissioner of Labour-2,
DMS Campus, Teynampet, Chennai - 600 006.

+2cc to Mr.R.Prabhakaran, Advocate SR.No.24706

W.P.No.24289 of 2013

RR(CO)
GN(23/04/2018)