

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2018

CORAM :

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P.No.19794 of 2018
and W.M.P.No.23231 of 2018

J.Sreenivasan

... Petitioner

Vs

1. The Director,
Industrial Safety and Health,
Chennai - 14.

2. Joint Director,
Industrial Safety and Health-I,
Vellore - 9.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified mandamus, to call for the records of the 1st respondent in proceedings No.L.Dis C2/15731/18 and to quash its order dated 18.07.2018 and to direct the 1st respondent to hear the appeal and to decide the same on merits and consequently, direct the respondents 1 and 2 not to initiate prosecution proceedings against the petitioner in terms of its order No.Na.Ka.E/963/2018 dated 21.05.2018.

For Petitioner : Mr.R.Ravindran,
Senior Counsel,
for Ms.S.Bazeer Ahamed

For Respondents : Mr.N.Srinivasan,
Additional Govt. Pleader

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ORDER

One workman T.Ashok kumar suffered an accident on 31.01.2018 at about 6.00 a.m., while he was working in the factory. It is the case of the Management that he was unauthorisedly carrying out certain operation during which time he sustained injuries on his left thigh, which resulted in amputation of left leg, in spite of best medical treatment at Christian Medical College Hospital, Vellore. The second respondent issued a show cause

notice on 02.04.2018 to the petitioner in respect of the above accident. The petitioner submitted his explanation on 11.04.2018. But, that explanation was rejected by order dated 21.05.2018. The rejection order dated 21.05.2018 did not give any reason as to why explanation submitted by the workman was not accepted and it simply states that the explanation is not accepted and further course of action will be taken before the Court of Law. Challenging the order, appeal has been filed by the petitioner, which has been rejected by the first respondent, by an order dated 18.07.2018 and that is under challenge in this writ petition.

2. A perusal of the order dated 18.07.2018 disclose that three reasons have been adduced by the first respondent for rejecting the appeal, viz., a) The appeal is barred by limitation; b) Appeal against show cause notice is not maintainable; c) Case is filed in Chief Judicial Magistrate Court, Vellore, in this regard and the matter is now pending before the Honourable Court.

3. The learned counsel appearing for the petitioner submits that these findings are untenable and it is against the materials available on record and therefore, the findings are unsustainable.

4. Under Section 107 of the Factories Act, 1948, appeal has to be filed within 30 days from the date of service of the order. The date of order is 21.05.2018 and it has been received by the petitioner on 07.06.2018 and appeal has been filed on 05.07.2018. As per Section 107 of the Factories Act, the petitioner has filed the appeal well within the time of 30 days from the date of receipt of the order. Therefore, the finding that the appeal is barred by limitation is apparently incorrect.

5. So far as the second finding is concerned, there is a finding that appeal is filed against the show cause notice. A perusal of the order would reveal that it is not a show cause notice. After showing cause, there is a final order passed, as against which, appeal has been filed, therefore, the second ground is also factually incorrect.

6. Insofar as the third finding is concerned, reliance could be had to the decision of a Division Bench of this Court reported in 2007 4 LLN 828 (Inspector of Factories, Vellore vs. Shows Engineering Ltd., Shollinghur), wherein, a contention has been raised that only to get away from the Criminal Prosecution, this kind of writ petition has been filed. The Division Bench, in the above case, has negatived the said contention. The relevant observation in para-2 reads as under:

"2. The writ petitions are filed against the show cause notice, dated 17 December 2002 on the basis of the inspection conducted on 29 October 2002 with reference to the occurrence of accident on 26 October 2002 in the premises of the writ-petitioner and the writ-petitioner was directed to give his explanation within a period of seven days. Accordingly, by letter, dated 8 January 2003, the Manager of the writ-petitioner submitted his explanation and also requested 15 days time on behalf of the writ-petitioner to give a detailed explanation. A memo was sent by the Inspector of Factories on 13 January 2003, negating the request made by the writ-petitioner. Thereafter, a reply was sent on 22 January 2003. Before receipt of the above said reply, as the complaint has to be lodged within 90 days from the date of accident, i.e. 26 October 2002, a proposal was submitted on 14 January 2003 to the Chief Inspector of Factories, Chennai for getting sanction to launch criminal prosecution against the writ-petitioner as well as the Manager. Aggrieved by the action of the respondent, writ petitions are filed contending that as contemplated under Section 88 of the Factories Act, immediately after the occurrence of the accident, it was intimated to the Inspector. Though it is denied by the Inspector, after consideration of the explanation submitted by the Manager and writ-petitioner on 8 January 2003 and 22 January 2003, the respondent should have passed an order in accordance with law, against which, an order of appeal is provided under Section 107 of the Factories Act. Therefore, in view of not considering the explanation submitted by the Manager and the writ-petitioner dated 8 January 2003 and 22 January 2003, respectively, launching the prosecution mainly on the ground that they have to launch the prosecution within a period of three months from the date of knowledge of the accident is illegal, contrary to the provisions of the Factories Act and detrimental to the interest of the petitioner as they have lost the right of appeal provided under the statute and they also have a right to seek time to comply with the lapses pointed out during the inspection by the Inspector and the limitation starts from the date instead of 90 days from the date of knowledge of the accident. Therefore, the order is set aside. The only reason for not considering the explanation submitted by the Manager on 8 January 2003 is that they want to drag on the prosecution which has to be launched within a period of three months from the date of the accident

and the show cause notice dated 17 December 2002, was not treated as a final order, which is illegal.”

7. On an overall consideration of the matter, this Court is of the considered view tat the reasons given for rejection of the appeal are wholly unsustainable. Under such circumstances, the order passed by the first respondent dated 18.07.2018 deserves to be set aside. Accordingly, the order dated 18.07.2018 is set aside and the writ petition is allowed. The matter is remitted back to the first respondent. The first respondent shall afford reasonable opportunity to both sides and to pass orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Director,
Industrial Safety and Health,
Chennai - 14.
2. Joint Director,
Industrial Safety and Health-I,
Vellore - 9.

W.P.No.19794 of 2018

RJI (Co)
CS/19/12/2018

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