



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 25.09.2018

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.20126 of 2018

and

W.M.P(MD)Nos.17878 and 17879 of 2018

The Executive Officer,
Pillayan Kattalai,
35, Sudalaimadan Kovil Street,
Tirunelveli Town- 627 006,
Tirunelveli District.

..Petitioner

Vs

C.Peratchi

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned order dated 31.5.2011, on the file of the Labour Court, Tirunelveli and quash the same.

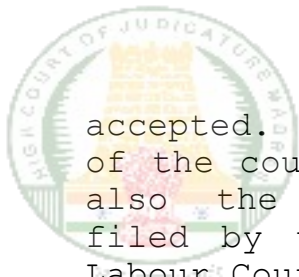
For Petitioner :Mr.K.Rajeshwaran

ORDER

Challenging the award of the Labour Court in I.D.No.94 of 2002, dated 31.5.2011, the present Writ Petition has been filed.

2.The case of the workmen is that he joined the service on 2.6.1989 and on 30.8.1990, he was disengaged from service. Challenging the non-employment, he raised an Industrial Dispute, which culminated into an award mentioned supra. The Petitioner was directed to be re-instated in service with continuity of service, but however, the back-wages was deprived by the Labour Court. Since the award has not been implemented, the workmen approached the Labour Court by filing a Computation Petition and the Labour Court by order, dated 20.10.2014, computed a sum of Rs.2,10,000/-. After a lapse of seven years, the present Writ petition is filed challenging the original award.

3.The case of the management before this Court is that the award passed by the Labour Court is an ex-parte award and even though they have filed a counter, the award has been passed and the factum of the award came to light only after the order made in the computation petition, which was communicated to them. The contention of the management that it is an ex-parte award, cannot be



accepted. Though the management has been set ex-parte, taking note of the counter filed by the management before the Labour Court and also the documentary evidence available on record, numbering seven filed by the workmen including the Conciliation proceedings, the Labour Court passed an award.

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4. The Industrial Disputes Act and the Tamil Nadu Industrial Dispute Rules made it clear that in case, one of the parties is absent, an award has got to be passed on merits and in this regard there are several judgements, wherein, it has been held that dismissed for default is not an award and the award has got to be passed on merits. In the present case on hand, a detailed award was passed by the Labour Court, which cannot be held to be perverse or erroneous. Even assuming for the sake of arguments that it is an ex-parte award, nothing prevented the Management to file a petition before the Labour Court invoking Rule 48 of the Tamil Nadu Industrial Dispute Rules and sought for condonation of delay and thereafter to contest the matter. The Labour Court has also computed the amount. The workman ought to have proceeded under Section 29 of the Industrial Disputes Act, 1947 and the officials who are responsible for the implementation of the award should have been punished for non-implementation of the award. Even now, as the cause of action is a continuous one (1981(1)LLJ Page 1) nothing prevented the workman from taking action against the persons falling under Section 32 of the Industrial Disputes Act for the non-implementation of the award. There is no error on the face of the records as there are no perverse findings. As there is a delay of 11 years in challenging the impugned award, I find no merits in the contention of the Writ Petitioner and the same has to be rejected.

5. It is contended by the Management that the Officials who dealt with the matter were very casual and they did not pursue the litigation which has resulted in the award of the Labour Court, dated 31.5.2011 and the order dated 20.10.2014 made in the Computation Petition. It is needless to mention that the Honourable Apex Court in number of judgments held that the entire back-wages can be paid to the workmen and the said amount can be recovered from the officials who are responsible for this litigation. The amount will have to be paid first to the workmen by the authorities concerned and then they have to recover the same from the officials who are responsible for this litigation. ((1993) 3 SCC 214-Central Co-operative Consumers store Limited, through its General Manager . vs. Labour Court, Himachal Pradesh at Shimla and another)

6. With the above observations, the Writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar(ADI)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar(CS-III)



TO
The Judge
Labour Court,
Tirunelveli.

+1cc to Mr.K.Rajeshwaran Advocate in SR.No.86720

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