

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17-09-2019

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

W.P.No.13523 of 2004

The Management,
Food Corporation of India,
Madras Harbour,
Madras - 100

..Petitioner

vs

1.M.Narayanan

2.The Presiding Officer,
Central Government Labour Court,
Principal Labour Court,
Chennai - 600 104.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the second respondent relating to order dated 31.12.2003 made in I.A.No.100 of 1993 in C.C.P.No.119 of 1990 and quash the same.

For Petitioner : Mr.A.S.Thambuswamy

For Respondent-1 : Dismissed vide Court order dated 21.08.2012

For Respondent-2 : Labour Court

O R D E R

The order dated 31.12.2003 passed in I.A.No.100 of 1993 in C.C.P.No.119 of 1990 is sought to be quashed in the present writ petition.

2. The writ petitioner is the Food Corporation of India. The learned counsel for the writ petitioner states that the first respondent-workman was employed as Loader in the services of the writ petitioner-management from 01.05.1969. The writ petitioner introduced a Voluntarily Retirement Scheme(VRS) through Circular dated 30.06.1986. As per the said Circular, every worker opting for VRS from the service of the Corporation

is entitled to the following benefits. The first respondent-workman opted for VRS and as per the Scheme, the amounts were settled and the first respondent-workman accepted the same and received the money also. However, the first respondent-workman filed a claim petition seeking certain additional benefits. An Ex parte order was passed by the second respondent-Central Government Labour Court on 31.10.1991 and the said Ex parte order was communicated to the writ petitioner, which was received by the petitioner on 28.02.1992.

3. The learned counsel for the writ petitioner states that steps were taken to set aside the Ex parte order and an application to condone the delay of 449 days in filing application for setting aside the Ex parte order was filed and the delay was also condoned. However, those applications were renumbered in I.A.Nos.99 & 100 of 1993. The petitioner paid the costs as per the orders passed in Interlocutory Application for condoning the delay. However, the Interlocutory Application to set aside the Ex parte order was pending during the relevant point of time.

4. The learned counsel for the writ petitioner states that the petitioner Food Corporation of India, is not responsible for such a huge delay and when the matter was taken up, the order was passed by the Central Government Labour Court, dismissing the petition by stating that the petitioner has not come forward to advance the arguments in the Interlocutory Application and the Interlocutory Application is pending unnecessarily from the year 1993 and the same shows the lethargic attitude of the Food Corporation of India.

5. This Court is of the considered opinion that all the issues are to be adjudicated on merits and in accordance with law in normal parlance. The Courts are liberal in setting aside the Ex parte orders. Certain technicalities, even if prevailing, that cannot be a ground to sustain the Ex parte order and the issues are to be adjudicated with reference to the documents and evidences and on merits.

6. This being the principles to be followed, Courts normally would not encourage the Ex parte orders. However, the circumstances arouse in this case, the Labour Court had rejected the Interlocutory Application and the observations made in the order dated 31.12.2003 reveals that even on the day of hearing, the Food Corporation of India representative / counsel was not advanced arguments in the Interlocutory Application. Thus, the Labour Court made an observation that the Interlocutory

Application is pending unnecessarily from the year 1993 for more than 10 years and made further observations that the conduct of the Food Corporation of India showed the lethargic attitude and consequently dismissed. Though the reasons stated in the order is not convincing, this Court is of an opinion that the said order undoubtedly was invited by the Food Corporation of India on account of the conduct of the representative / counsel, who is supposed to get along with the case whenever the matters are listed. When the Interlocutory Application to set aside the Ex parte order is filed in the year 1993 and such an Interlocutory Application is kept pending for more than 10 years and when it was taken up for hearing and the Court found that even at that point of time, the Food Corporation of India did not come forward to advance arguments, then naturally no one can expect that Court would have any other option except by dismissing the petition itself.

7. However, this Court is of an opinion that even in such cases, a liberal approach is required in view of the fact that Food Corporation of India is a "State" within the meaning of Article 12 of the Constitution of India. When the public money is involved on account of certain erroneous conduct or omissions or commissions of the officials, the public money should not suffer. Taking a pragmatic view in this regard, this Court is of an opinion that the Ex parte order is to be scrapped and a direction is to be issued to hear the matter on merits and in accordance with law as expeditiously as possible. While doing so, this Court is of an opinion that the dereliction, omissions or commissions of the officials of the Food Corporation of India cannot be condoned by this Court. In such circumstances, it may be possible that there is a commission on the part of the officials also. However, all those aspects are to be enquired into by the competent authorities and not by this Court.

8. Considering the observations made by the Labour Court, this Court has no hesitation in coming to the conclusion that the writ petitioner Food Corporation of India should conduct an enquiry in respect of the conduct of the officials, who was in charge of the case and their commissions or omissions, dereliction of duty, negligence etc., and initiate appropriate action under the Discipline and Appeal Rules.

9. This apart, this Court is inclined to impose some costs and the said costs also to be recovered from the officials, who are responsible for such negligence and dereliction of duty.

10. This being the factum, the order dated 31.12.2003 passed in I.A.No.100 of 1993 in C.C.P.No.119 of 1990 is quashed subject to the condition that the writ petitioner pays Rs.5,000/- (Rupees Five Thousand only) to the High Court Legal Services Authority on or before 04.10.2019, failing which, the writ petition itself stands dismissed automatically.

11. With the above directions and conditions, the writ petition stands allowed with costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Presiding Officer,
Central Government Labour Court,
Principal Labour Court,
Chennai - 600 104.
2. The Member Secretary,
High Court Legal Services Authority,
Chennai.

+1cc to Mr.A.S.Thambu Samy, Advocate, SR.80008

W.P.No.13523 of 2004

SS (CO)
CB (04/10/2019)

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