

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14535 of 2004
and W.M.P.No.17217 of 2004

The Management of Belvidere Estate
Yercaud
Salem District.

...Petitioner

vs.

1. The Assistant Commissioner of Labour
Salem-7.

2. The Tahsildar
Yercaud.

3. R.Pappa

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in A4/1073/04 and quash its order dated 06.02.2004 and direct the 1st respondent to entertain the petitioner's applications to condone the delay of 333 days and to set aside the ex-parte order in G.A.No.121/02.

For Petitioner : Mr.Anand Gopalan for
M/s.T.S.Gopalan & CO

For Respondents : Mr.J.Ramesh,
Additional Government Pleader
for RR1 to 2.
Mr.K.M.Ramesh
for R3.

O R D E R

The order dated 06.02.2004 passed by the first respondent/Assistant Commissioner of Labour returning the Interlocutory application filed by the writ petitioner/Management to set aside the ex-parte order dated 31.01.2003 is under challenge in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner states that the third respondent/workman filed a petition under the Gratuity Act and the order was passed on 31.01.2003, without even serving notice on the writ petitioner/Management. The petitioner was therefore not aware of the proceedings at all. The ex-parte order dated 31.01.2003 was communicated to the writ petitioner and the same was received on 01.09.2003 in letter No.A4/8731/2003 dated 18.08.2003. On receipt of a copy of the ex-parte order, the writ petitioner/Management filed the Interlocutory application on 28.01.2004. Thus, there is a delay of about 2 ½ months and if the delay is calculated from the date of passing the award, it would be around 333 days. Either way, the learned counsel for the writ petitioner states that the delay is to be calculated from the date on which the ex-parte order was communicated to the writ petitioner. The order was communicated and received by the writ petitioner only on 01.09.2003 and therefore, the delay is not so enormous. Under these circumstances, the first respondent ought to have condoned the delay.

3. The learned counsel appearing on behalf of the third respondent objected the prayer by stating that as per the Act and rules, the first respondent has no power to condone the delay and the petition to set aside the ex-parte order should be filed within a period of 30 days and admittedly, the petition was filed beyond the period of 30 days. Therefore, there is no infirmity as such in respect of returning the Interlocutory Application by the first respondent.

4. This Court is of the considered opinion that every issue or dispute is to be adjudicated by the competent forum or competent authority on merits and by following the procedures contemplated under law. An ex-parte order in normal circumstances cannot be encouraged by the High Court. Only if the rights of the parties are crystallized, then only, the order must be upheld. An adjudication of issues on merits and in accordance with law is the principles to be followed and the petition to set aside the ex-parte order is to be considered positively and only on exceptional circumstances, if the intention of the parties are otherwise, the ex-parte order shall be upheld and not otherwise.

5. In the present case, the writ petitioner, in the affidavit filed in respect of Interlocutory Application, has stated that the ex-parte award was not received by the writ petitioner. They have further stated that notice of hearing was also not received by the writ petitioner throughout the proceedings. It is contended that the writ petitioner was not aware of the entire proceedings and the copy of the ex-parte order was received on 01.09.2003.

6. This being the factum, this Court is of the considered opinion that the writ petitioner has made out a case for setting aside the ex-parte order passed by the first respondent and accordingly, the issues are to be decided on merits. The third respondent/workman filed the petition for settlement of the gratuity amount.

7. Under these circumstances, some cost is to be awarded in order to adopt balancing approach and to mitigate the inconvenience caused for the workman due to the non-settlement of the gratuity in time. Accordingly, the writ petitioner is directed to pay the cost amount of Rs.15,000/- directly to the third respondent by way of demand draft and the said payment is to be made within a period of four weeks from the date of receipt of a copy of this Order. Along with proof of cost, the writ petitioner is directed to submit the copy of this Order to the first respondent who in turn is directed to adjudicate the matter on merits by affording opportunity to all the parties concerned and decide the same as expeditiously as possible.

8. With these directions, the impugned order passed by the first respondent in A4/1073/04 dated 06.02.2004 is quashed. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ssb
To

1.The Assistant Commissioner of Labour
Salem-7.

2.The Tahsildar
Yercaud.

+1cc to M/s.T.S.Gopalan & CO, Advocate SR.79606
+1cc to Mr.K.M.Ramesh, Advocate SR.79626
+1cc to the Government Pleader SR.80220

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BS(CO)
CB(04/11/2019)