

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.Nos.5017 & 5018 of 2006

and

W.M.P.Nos.5385 to 5388 , 13657 & 13658 of 2006

W.P.No.5017 of 2006 :-

The Management of Vasantha Mills Ltd.,
Trichy Road, Singanallur,
Coimbatore-641 005.
Rep., by Mr.K.K.Shivakumar, Director. ... Petitioner

-vs-

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.S.R.Palanisamy ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified mandamus to call for the records of the award of the 1st respondent made in I.D.No.105/98 dated 07.09.1998 and quash the same and consequently forbear the Labour Court from proceeding with C.P.No.192/03 pursuant to the award of the Labour Court made in I.D.No.105/98 dated 07.09.1998.

W.P.No.5018 of 2006 :-

The Management of Vasantha Mills Ltd.,
Trichy Road, Singanallur,
Coimbatore-641 005.
Rep., by Mr.K.K.Shivakumar, Director. ... Petitioner

-vs-

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.S.Balaraman ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified mandamus to call for the records of the award of the 1st respondent made in I.D.No.104/98 dated 14.09.1998 and quash the same and consequently forbear the Labour Court from proceeding with C.P.No.192/03 pursuant to the award of the Labour Court made in I.D.No.104/98 dated 14.09.1998.

For Petitioner : Mr.S.Silambanan
(In both W.Ps.) Senior Counsel
assisted by Mr.N.Umapathi

For Respondents : R1 - Labour Court
(In both W.Ps.) R2 - Mr.S.Sathiachandran
Amicus Curiae

COMMON ORDER

The preliminary issue to be considered in the present writ petitions is whether the unexplained delay of eight years in filing the writ petitions can be condoned or not.

2.Beyond the merits contended by the writ petitioner Management, the fact remains that the impugned awards dated 07.09.1998 and 14.09.1998 in I.D.Nos.105 and 104 of 1998 respectively, which were ex parte awards, were served to the writ petitioner Management in the year 1998. Challenging the same, the present writ petitions were filed on 13th February, 2006, after a lapse of about eight years from the date of passing of the awards.

3.The learned Senior Counsel appearing on behalf of the writ petitioner Management made an attempt to establish that the factory was in crisis and it was wound up, proceedings were instituted under the statutes and the Management was in the process of settling many such claims and under those circumstances, they were not aware of the awards passed by the Labour Court on 07.09.1998 and 14.09.1998.

4.However, a plain reading of the entire affidavit reveals that no reason has been furnished for the long delay of eight years in filing the writ petitions. In one paragraph, it is stated that the learned counsel engaged by the writ petitioner Management had not informed about the award. However, such a ground cannot be accepted, as the communication between the writ petitioner Management and their own counsel is a privilege communication. Thus, on that ground, the delay of eight years cannot be condoned.

5.Unexplained delay cannot be condoned for the purpose of entertaining a writ petition. The awards were passed in the year 1998. Undoubtedly, they are ex parte awards. The writ petitioner Management themselves admitted the fact that after passing of the ex parte award by the Labour Court, the petitioner Management filed petitions to condone the delay in filing the petitions to set aside the ex parte awards. Thus, it is clear that the writ petitioner Management was aware of the awards dated 07.09.1998 and 14.09.1998. The Management admitted in paragraph 13 of the affidavit that they have filed petitions to condone the delay in filing the petitions to set aside the ex parte awards. However, it is further stated that the said petitions were also dismissed for non prosecution by the Labour Court.

6.The petitioner admits that they ought to have challenged the awards before the High Court. However, the petitioner states that they were not advised properly during the relevant point of time. The reasons stated in this paragraph is undoubtedly unacceptable and the petitioner was very much aware of the ex parte awards and they filed petitions to set aside the ex parte awards along with condone delay petitions and those petitions were also dismissed for non prosecution and under these circumstances, the petitioner Management was not vigilant in pursuing the remedy and under these circumstances, this Court is not inclined to condone the delay of eight years, which is not explained properly.

7.Accordingly, these writ petitions stand dismissed on the ground of delay and laches. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

abr
To

The Presiding Officer,
Labour Court, Coimbatore.

+lcc to Mr.S.Sathiachandran, Advocate SR.No.89398
+lcc to M/s.S.Silambanan Associates, Advocate SR.No.89016

W.P.Nos.5017 & 5018 of 2006

MR (CO)
GMY (04/12/2019)