

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2019

CORAM

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

W.P.No.1426 of 2016

The General Secretary
Indian Bank Employees Association
Having office at
No.17, Ameerjan Street,
Choolaimedu,
Chennai - 600094.

....Petitioner

Vs

1. Presiding Officer,
Central Government Industrial Tribunal cum Labour
Court,
Sastri Bhavan,
Haddows Road,
Chennai - 600006.

2. The General Manager,
Indian Bank Head Office,
No.254-260, Avvai Shanmugam Salai,
Royapettah,
Chennai - 600014.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 08.09.2015 in unnumbered I.A. of 2015 in I.D.No.95 of 2009 as illegal, arbitrary and contrary to law and consequently direct the 1st respondent Tribunal to number the I.A. filed to condone the delay in filing the petition to restore I.D.No.95 of 2009 and also the I.A. filed to set aside the exparte award dated 13.05.2010 in I.D.No.95 of 2009 and decide the petitions on its merits and in accordance with law.

For Petitioner : Mr.Balan Haridas

For Respondents: Mr.Anand Gopalan

for M/s. T.S.Gopalan & CO. [R2]

O R D E R

The order passed by the first respondent dated 08.09.2015 in unnumbered I.A. of 2015 in I.D.No.95 of 2009 is under challenge in the present writ petition.

2. The petitioner is Indian Bank Employees Association, filed the writ petition to quash the order dated 08.09.2015 in an unnumbered Interlocutory Application filed by them during the year 2015 in I.D.No.95 of 2009. The unnumbered Interlocutory Application was filed to condone the delay in filing the petition to restore I.D.No.95 of 2009 and also another Interlocutory Application was filed to set aside the exparte award dated 13.05.2010 in I.D.No.95 of 2009.

3. The learned counsel for the writ petitioner states that an exparte award was passed in I.D.No.95 of 2009 and two Interlocutory Applications were filed, one to set aside the exparte award and another to condone the delay in filing the set aside petition. However, the first respondent-Central Government Industrial Tribunal cum Labour Court, rejected the Interlocutory Application on the ground that the award was passed in the year 2010 and the same was published thereafter. Thus, the Tribunal has become functus officio after publication of the award. Accordingly, the petition to set aside the award, was returned, as not maintainable.

4. The learned counsel for the writ petitioner further made a submission that the issue in this regard, has now been settled by the three Judges Bench of the Hon'ble Supreme Court in a case ["Haryana Suraj Malting Limited versus Phool Chand" reported in (2018) 16 SCC 567] from which paragraph Nos.34 and 37 are extracted as under:-

"34. In case a party is in a position to show sufficient cause for its absence before the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal, in exercise of its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.

37. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An

award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent."

5. The Apex Court of India in the case cited supra, unambiguously held that the Labour Court / Tribunal became not functus officio even after the publication of the Award, which has become enforceable.

6. It is contended that an Award to become binding, it should be passed in compliance with the principles of natural justice. An Exparte award cannot be said to be an award passed in compliance with the principles of natural justice. The scheme of the Industrial Disputes Act, as a whole, enumerates the procedures to be followed for effective adjudication of the disputes and to resolve the same, so also to maintain industrial peace, which would resolve development of our great Nation. Thus, an Award passed by following the procedures as contemplated and in compliance with the principles of natural justice alone can be considered as an award, which is to be enforceable and in all other circumstances, if an Interlocutory Application is filed to set aside an Exparte award and an award, which was not adjudicated properly are to be entertained by the Labour Court / Tribunal itself.

7. This being the principles to be followed, the Labour Court / Tribunal, on receipt of any such

Interlocutory Application to set aside the Exparte award by condoning the delay in filing such Exparte award has to number the application, take up for hearing and consider the same on merits and in accordance with law. However, the Labour Court / Tribunal has to consider all such Interlocutory Applications and to be disposed of as expeditiously as possible. The genuinity or otherwise in respect of the reasons furnished by the respective parties are also to be considered. In any event, such applications filed to condone the delay or to set aside the Exparte award shall be adjudicated and disposed of as expeditiously as possible, so as to avoid the idea of the parties to prolong and protract the final disposal of the disputes raised. Unnecessary adjournments of such Interlocutory Applications are to be avoided. Even in case, such adjournments are sought for by the parties, the said adjournments are to be rejected strictly and the matters are to be decided on merits. The practice of allowing the disputes to go Exparte and thereafter filing an application to prolong and protract the issues also can never be encouraged and such intentions or practices of the litigants or the lawyers are to be deprecated. Thus, the Labour Courts / Tribunal must be cautious and dispose of all such Interlocutory Applications as expeditiously as possible and by considering the genuinity of the reasons furnished in such Interlocutory Applications.

8. This being the legal principles to be followed as enunciated by the Apex Court in judgment cited supra, the present writ petition is to be considered. Consequently, the order dated 08.09.2015 passed in unnumbered Interlocutory Application of the year 2015 in I.D.No.95 of 2009 is quashed. The 1st respondent / Central Government Industrial Tribunal cum Labour Court is directed to number the Interlocutory Application filed to condone the delay in filing the set aside exparte petition and decide the same on merits and in accordance with law by affording an opportunity to all the parties concerned and thereafter, if the delay is condoned, then the other Interlocutory Applications are to be taken up for hearing and appropriate orders are to be passed as expeditiously as possible.

9. With these directions, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

sni/kak

To

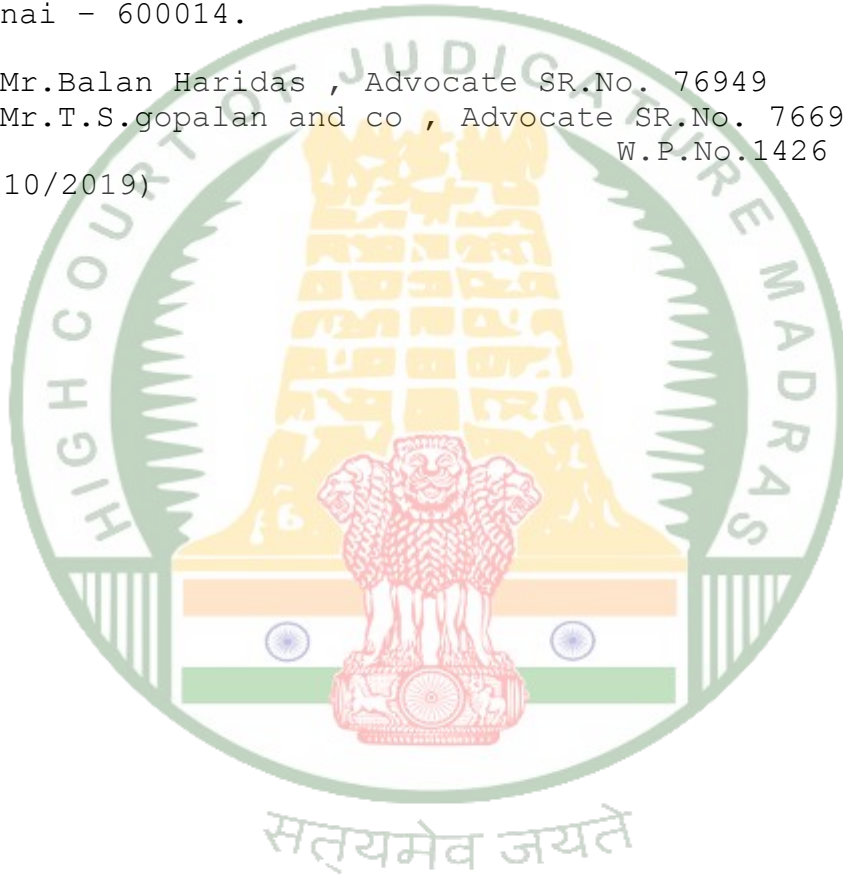
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+1cc to Mr.Balan Haridas , Advocate SR.No. 76949

+1cc to Mr.T.S.gopalan and co , Advocate SR.No. 76696

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A.SK(23/10/2019)



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