

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :15.11.2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.24185 to 24187 of 2010
and
M.P.No.1 of 2010

Management of Binny Limited,
(B & C Mills) rep. by its Company Secretary,
Perambur, Chennai - 600 011. ... Petitioner in all W.Ps.

vs.

1. Presiding Officer,
II Additional Labour Court,
Chennai.

2. Mr.M.T. Rajamanickam ... Respondents in all W.Ps.

COMMON PRAYER : Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in C.P.No.2 of 2004 dated 25.06.2007 and I.A.No. 120 of 2008 and I.A.No.28 of 2009 in C.P.No.2 of 2004 dated 16.07.2019 and quash the same.

For Petitioner : Mr. S.Haroon Al. Rashad
for M/s. T.S. Gopalan & Co.

For Respondents : R1 - Labour Court
Mr.G.Saravanakumar [R2]

COMMON ORDER

The order dated 25.06.2007 passed in C.P.No.2 of 2004 is under challenge in the present writ petition.

2. The facts in nutshell presented before this Court by the learned counsel for the writ petitioner Management is that the second respondent was appointed as a fitter in the petitioner Mill on 22.05.1958. The writ petitioner Mill was closed on account of various reasons and on the fact that there

was a continuous strike between 14.01.1984 to 28.12.1984. Subsequently, a settlement under Section 12(3) of the Industrial Disputes Act between the petitioner and the Employment Union were signed on 23.11.1984. The second respondent was redeployed in the new weaving mill administered by the writ petitioner Management on 29.12.1984. Subsequently, on account of the allegations of not reporting for duty, the second respondent was terminated vide proceeding dated 07.02.1985. The second respondent raised an Industrial Dispute alleging non-employment in I.D.No.317 of 1985. During the pendency of the Industrial Dispute, the second respondent reached the age of superannuation on 19.03.1988. The Labour Court allowed the I.D.No.317 of 1985 with a direction to reinstate the second respondent with back wages.

3. The petitioner Management challenged the award passed in I.D.No.317 of 1985 in W.P.No.18519 of 1990. Consequently, the second respondent filed C.P.No.779 of 1990 before the Labour Court, Chennai. The High Court passed an order in W.P.No.18519 & 18520 of 1990 on 24.11.2000 setting aside the award of the Labour Court passed in I.D.No.317 of 1985. The other writ petition filed in W.P.No.2060 of 1996 was dismissed as infructuous in view of the order passed in W.P.No.18519 & 18520 of 1990 dated 26.11.2000. The writ petitioner Management was permitted to withdraw the deposited amount also. Thereafter, on 02.01.2004, the second respondent filed C.P.No.2 of 2004 claiming closure compensation for violation of Section 25(O) of the Industrial Disputes Act and retrenchment compensation under Section 25(N) of the Industrial Disputes Act.

4. The writ petitioner Management was set ex-parte for not filing counter. The ex-parte order was passed on 25.06.2007. The writ petitioner Management filed an interlocutory application in I.A.No.120 of 2008 to condone the delay of 174 days in filing the petition to set aside the ex-parte order and another interlocutory application in I.A.No.28 of 2009 to set aside the ex-parte order passed in C.P.No.2 of 2004. The said interlocutory applications were rejected by the Labour Court on 16.07.2010, against which the second respondent filed an Execution Petition, which is pending.

5. This Court is of an opinion that admittedly the order passed in claim petition No. 2 of 2004 is an ex-parte order. The order of the Labour court reveals that the respondent Management called absent and set ex-parte. Accordingly, the claim petition was allowed. The claim petition is to be adjudicated on merits and the issues are to be decided with reference to the documents and evidences to be filed by the respective parties.

6. In the present case, the writ petitioner Management is

all along pursuing various cases before the Labour Court as well as the High Court. Under these circumstances, the learned counsel for the writ petitioner states that on account of certain genuine reasons, the Management had not appeared before the Labour Court and they were set ex-parte. This apart, the appearance of an advocate was rejected by the Labour Court and the Management representative had to appear before the Labour Court. Under these circumstances, the said mistake occurred and therefore, the Labour Court passed an ex-parte order. The reasons stated by the writ petitioner Management is convincing and under these circumstances, the ex-parte order cannot be sustained and the parties must be given an opportunity to adjudicate the issues on merits.

7. This being the principles to be followed, the order passed by the Labour Court in C.P.No.2 of 2004 dated 25.06.2007 and the order passed in I.A.No.120 of 2008 and I.A.No.28 of 2009 dated 16.07.2010 are quashed. The Labour Court is directed to take the claim petition on file and adjudicate the same on merits by affording an opportunity to all the parties concerned and dispose of the same as expeditiously as possible.

Accordingly, the writ petition stand allowed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

Presiding Officer,
II Additional Labour Court,
Chennai.

+1cc to Mr.T.C.Gopalan & Co, Advocate, S.R.No. 95170

W.P.Nos.24185 to 24187 of 2010
and M.P.No.1 of 2010

CA (CO)
GN (30/12/2019)