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IN THE HIGH COURT OF JUDICATURE AT MADRAS

02.04.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.4262 of 2019

G.Jai Prakash

... Petitioner

vs.

1.The Appellate Authority under
the Tamil Nadu Shops and Establishments
Act, 1947,
(Special Joint Commissioner of Labour),
Commissionerate of Labour,
Chennai-600 006

2.The Management of the Lakshmi Vilas
Bank Limited,
Corporate Office:"LVB House",
No.4, Sardar Patel Road,
Guindy,
Chennai-600 032

3.The Disciplinary Authority,
The Management of the Lakshmi Vilas
Bank Limited,
Corporate Office:"LVB House",
No.4, Sardar Patel Road,
Guindy,
Chennai-600 032

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 10.04.2018, which was received by the petitioner on 15.01.2019, passed by the first respondent in TSE-1/IA 3/2017, and to quash the same and consequently direct the first respondent to decide the appeal filed by the petitioner under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, on merits.

For Petitioner .. Mr.K.Elango
For Respondents .. M/s.T.R.Sathiyamohan for
R2 and R3
Mr.J.Ramesh, A.G.P.for R1

ORDER

The present writ petition has been filed against the order passed by the first respondent/appellate authority constituted under the Tamil Nadu Shops and Establishments Act, 1947, dismissing the I.A.No.3 of 2017 in un-numbered TSE of 2017, filed by the petitioner herein seeking condonation of delay of 1513 days.

2.According to the petitioner herein, he was discharged from service on 23.11.2012 for an act of misconduct. Against the discharge, the petitioner appears to have filed an appeal to the appellate authority on 08.01.2013. The said appeal was rejected on 19.08.2013. Against the rejection of the appeal, the petitioner preferred Review Application on 06.02.2014 and according to the petitioner, no orders were passed in the said Review Application.

3.The petitioner had been sending periodical representations and reminders on 04.04.2014, 02.05.2015 and 15.12.2015 to the second respondent Management for disposal of his Review Application. However, the representations have not evoked any response from the Management nor was the petitioner informed about the status of the Review Application pending before the authority.

4.In the meanwhile, the petitioner appears to have approached the Management for settlement of certain benefits due to him on his discharge and the amounts have also been settled on 29.04.2016. After realising that there was no action forthcoming from the respondent bank in respect of the Review Application, eventually the petitioner approached the first respondent by filing an appeal under section 41 of the the Tamil Nadu Shops and Establishments Act, 1947, with the condone delay application of 1513 days.

5.The first respondent authority, taking note of the long delay, has dismissed the condone delay

application, against which, the present writ petition has been filed.

6.Mr.K.Elango, the learned counsel appearing for the petitioner would submit that the first respondent authority has dismissed the condone delay application only on the ground that the petitioner had been settled certain benefits on his discharge from service and in any event, the delay was very long, unexplained and therefore, the first respondent authority has dismissed the application seeking to condone the delay. The learned counsel would submit that only in the proceedings before the first respondent appellate authority, the petitioner came to know that his Review application had been disposed of by the authority against him on 26.03.2014 itself, when counter affidavit was filed on behalf of the Management. In any case, he was pursuing the disposal of the Review Application even in 2015 as mentioned above. However, there was no written response from the Management for his representations/reminders. Therefore, he was under the bona fide impression that his Review Application was not disposed of and was waiting for the disposal of the Review Application one way or the other. This has resulted in approaching the first respondent with the delay of 1513 days.

7.According to the learned counsel for the petitioner, inspite of proper explanation given in the condone delay application, the authority has chosen not to accept the same and has chosen to dismiss the condone delay application.

8.At this, the learned counsel for the Management would submit that the petitioner has failed to pursue his Review Application properly and even as per his own affidavit, he has not pursued his Review Application after 2015. The petitioner has not made out a strong case for condonation of delay and therefore, the authority has rightly dismissed the petition for condonation of delay.

9.This Court has considered the submissions made on behalf of the petitioner as well as the second respondent bank.

10.From the affidavit filed in support of the condonation of delay application, it could be seen that the petitioner has come up with certain reasons for the delay,

which reasons cannot said to be unacceptable. It appears that the petitioner was under bona fide impression that his Review Application was still pending with the Management and the same was not disposed of. According to the averments as contained in Paragraph No.8 of the affidavit filed in support of the condone delay application, the petitioner has even sent reminders on 02.5.2015 and 15.12.2015, which was much after the disposal of the Review Application on 26.3.2014 and if the petitioner had known that the Review Application was disposed of in 2014 itself, the question of sending reminders in 2015 would not have arisen at all. Therefore, this Court is of the view that the petitioner has come up with acceptable reasons for condonation of delay.

11. In any event, this Court is of the view that the termination of the workman needs to be adjudicated and his appeal cannot be rejected at the threshold, by rejecting the condone delay application. The petitioner has also come up with sufficient reasons for seeking condonation of delay and unfortunately, the first respondent authority has merely chosen to reject the condone delay application only on the ground that the petitioner had been settled certain benefits. In any event, this Court is of the view that the appeal of the petitioner has to be decided on its merits and in accordance with law and therefore, this Court considers this case as fit case to condone the delay of 1513 days in filing the appeal and the delay as such is condoned. The matter is remanded back to the first respondent authority, who shall adjudicate the appeal on its merits and in accordance with law and dispose of the same as expeditiously as possible.

In the result, the writ petition is allowed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar (CS vi)

//True Copy//

Sub Assistant Registrar

msk

To

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the Tamil Nadu Shops and Establishments
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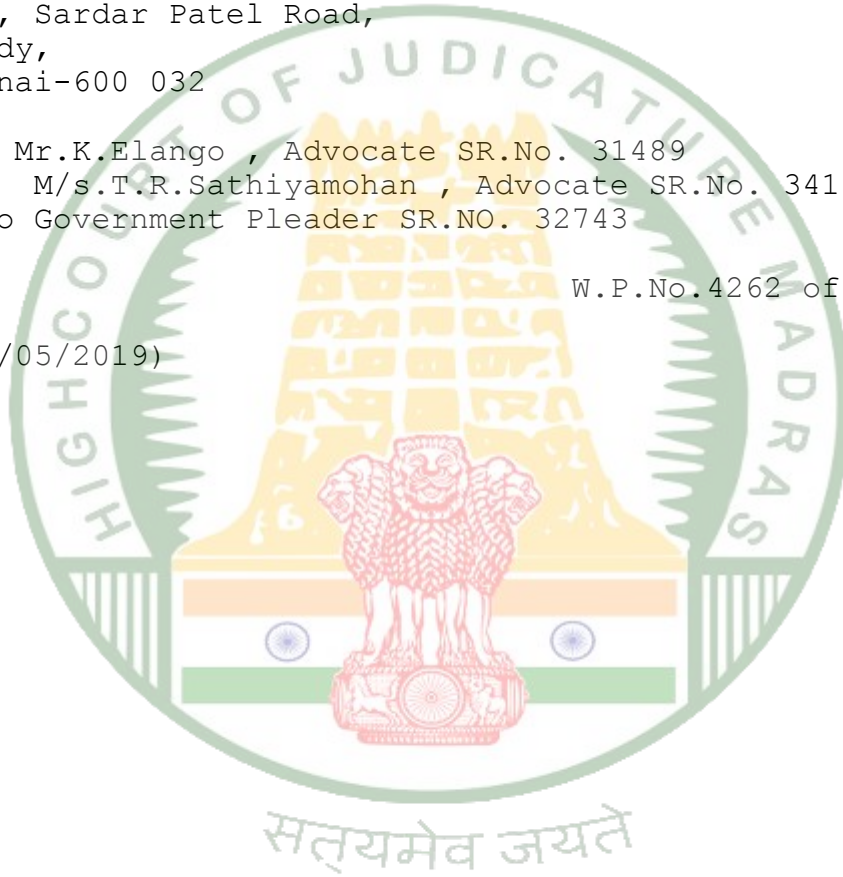
+1cc to Mr.K.Elango , Advocate SR.No. 31489

+1cc to M/s.T.R.Sathiyamohan , Advocate SR.No. 34167

+1 cc to Government Pleader SR.NO. 32743

W.P.No.4262 of 2019

gj (CO)
A.SK(06/05/2019)



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