

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2019

PRONOUNCED ON : 04.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.NO.32043 OF 2012

AND

M.P.NO.2 OF 2012

M.Amirthalingam

...Petitioner

Versus

1. The Presiding Officer,
Labour Court,
Cuddalore
2. The President,
Nidhinatham Panchayat,
Thittakudi Taluk, Cuddalore District.
3. The Block Development Officer,
Mangalur Panchayat Union,
Mangalur, Thittakudi Taluk,
Cuddalore District.
4. M.Mayavel

...Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records and quash the order dated 28.09.2011, passed by the 1st respondent in I.D.No.29/2011 and consequently, direct respondents to forbear from interfering with the petitioner's right to serve as Panchayat Secretary of the 2nd respondent.

For Petitioner :: Mr.R.Gururaj

For R2 :: Mr.M.Sudharsan

For R3 :: Mr.G.Mutharasu

ORDER

The writ petition had been filed in the nature of Certiorari Mandamus, calling for the records of the 1st respondent, the Presiding Officer, Labour Court, Cuddalore, relating to the order dated 28.09.2011 passed in I.D.No.29/2011 and consequently direct the respondents to forbear from interfering with the petitioner's right to serve as Panchayat Secretary of the 2nd respondent.

2. The 4th respondent herein M.Mayavel, had filed the said Industrial Dispute under Section 2(A)(2) of the Industrial Dispute Act, 1947, to reinstate him with continuity of service, backwages and other attendant benefits. The writ petitioner was not a party in I.D.No.29/2011.

3. The first respondent in the said I.D.No.29/2011 was the President, Nithinatham Panchayat, Thittakudi Taluk, Cuddalore District. The second respondent was the Block Development Officer, Mangalur Panchayat Union Office, Cuddalore District. The Presiding Officer, Labour Court, Cuddalore, by award dated 28.09.2011, had allowed the Industrial Dispute and had further held that the fourth respondent herein was entitled for reinstatement, continuity of service, backwages and other attendant benefits.

4. The respondents in the Industrial Dispute filed I.A.No.2005 of 2012, seeking to condone the delay of 382 days in filling the application to set aside the said award. By order dated 28.02.2013, the Presiding Officer Labour Court, Cuddalore, had passed a well considered order dismissing the said application. Thereafter, the said respondents had also filed W.P.No.13410 of 2013 before this Court. That writ petition was also dismissed for non-prosecution on 06.09.2017. Consequently, the award in I.D.No.29 of 2011 dated 28.02.2013, had attained finality.

5. The writ petitioner herein is a third party to the Industrial Dispute proceedings. He had filed the present writ petition seeking to set aside the said award. Prima facie, the writ petitioner has no locus standi to maintain the writ petition. The respondents in the Industrial Dispute had filed application to condone the delay of 382 days in filing an application to set aside the award dated 28.09.2011. That application had been dismissed by order dated 28.02.2013. The

writ petition challenging that order in W.P.No.13410 of 2013 had also been dismissed for non-prosecution on 06.09.2017. Consequently, the attempt by the present petitioner is clearly an abuse of process of Court. It is also a clear instance of re-agitation of the same issue.

6. In 1998-3-SCC-573 (K.K.Modi Vs. K.N.Modi), the Honourable Supreme Court had stated as follows:-

"44. One of the examples cited as an abuse of the process of the court is re litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against him. The re agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

7. I hold that, the present writ petition is a clear case of re-agitating the same issue and this cannot be permitted. The respondents in the Industrial Dispute had filed application to condone the delay of 382 days in filing application to set aside the award and that had been dismissed. They filed writ petition before this Court and that had also been dismissed. The writ petitioner herein who is a third party to the Industrial Dispute proceedings cannot seek any indulgence from this Court to set aside the said award. He cannot seek to reagitate the

issue finally settled in I.D.No.29/2011 by order dated 28.09.2011. The writ petition itself is not maintainable and has no merits. Accordingly, the writ petition is dismissed. No Costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smv

To

1. The Presiding Officer,
Labour Court,
Cuddalore
2. The President,
Nidhinatham Panchayat,
Thittakudi Taluk, Cuddalore District.
3. The Block Development Officer,
Mangalur Panchayat Union,
Mangalur, Thittakudi Taluk,
Cuddalore District.

+1cc to Mr.D.Baskar, Advocate, S.R.No.32645
+2cc to M/s.K.Vennila, Advocate, S.R.No.32568

W.P.No.32043 of 2012
and
M.P.No.2 of 2012

pms (co)
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