

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No. 1822 of 2018

BHEL Mazdoor Sangam (BMMS),
Rep by its General Secretary,
S.Nagarajan

...Petitioner

-vs-

1. The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
1st Floor, 'B' Wing,
Shastri Bhavan, Chennai - 6.
2. The Executive Officer,
M/s Bharat Heavy Electricals Limited,
Kailasapuram, Tiruchirapalli - 620 014.

...Respondents

Writ Appeal filed under Clause 15 of Letters Patent for setting aside the order passed by this Court in W.P.No.1405 of 2018 dated 24.01.2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records in pursuant to I.D.No.113 of 2014 dated 13.04.2016 by the allowing the above Writ Appeal and consequently direct the 2nd respondent to pay the revised pay progression with consequential benefits to those employees, who were recruited against Advt.Nos.276, 277(i), 277(ii) and 278 after completion of one year period as per the 2nd respondent's advertisement and the reference No.L-42011/101/2014-IR (DU) dated 27.11.2014, by the Central Government, Ministry of Labour and Employment to the 1st respondent.

For petitioner : Mr.L.Chandra Kumar
for M/s.K.Satiyamurthi

For Respondent : Mr.A.V.Arun (for R.2)

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This Appeal by the Writ Petitioner is directed against the order dated 24.01.2018 in W.P.No.1405 of 2018. The said writ petition was filed by the appellant challenging the award passed by the Central Government Industrial Tribunal-cum-Labour Court (CGIT) dated 13.04.2016 in I.D.No.113 of 2014 and for a consequential direction upon the second respondent to pay the revised pay progression with consequential benefits to those employees who are recruited against the advertisement issued by the second respondent after completion of one year.

2. The writ petition was dismissed at the stage of admission on the ground that the appellant has slept over the matter for the past two years and approached the Court belatedly and there is no explanation whatsoever for that delay. The said order is impugned before us.

3. We have heard Mr.L.Chandra Kumar for M/s.K.Satiyamurthi, learned counsel for the appellant/assessee and Mr.A.V.Arun, the learned counsel for the second respondent.

4. The appellant is a Trade Union called Bhel Mazdoor Sangam (BMS). The relief sought for by the appellant in the dispute raised before the CGIT was to award revised pay progression with consequential benefits to those employees who are recruited against the Advt Nos. 276, 277(i), 277(ii) and 278 after completion of one year period as per the advertisement issued by the second respondent and consequentially sought for other relief's which are set out in paragraph vii of the claim statement dated 16.01.2015. The second respondent/management resisted the claim by filing counter dated 14.02.2015 for which a rejoinder statement was filed by appellant/union on 15.05.2015 before the CGIT. The Appellant/Union examined one Thiru G.Sankar as W.1 and on behalf of the second respondent, two witnesses were examined as M.W.1 and M.W.2. The appellant/union marked 46 exhibits as W.1 to W.46. There were Court exhibits C.1 to C.3 and the Management marked orders of appointment of the respondent employees in Ex.M.1 series and copy of G.O.(2D) No.17 as Ex.M.2, the letter from the Commissioner of Labour as Ex.M.3, and the Advertisement dated 29.10.2005 in Advt.No.276 as Ex.M.4.

5. The CGIT considered the oral and documentary evidence placed before it and passed an award dated 13.04.2016. This award was impugned in the writ petition. The appellant/union

admitted to the fact that the award was received by the union on 21.06.2016. However, the writ petition was filed on 02.01.2018, the appellant would further admit that proper explanation was not given in the writ petition as to why the appellant/union did not challenge the award earlier. The learned Single Bench opined that the appellant/union has slept over the matter and in the absence of any explanation for the delay, dismissed the writ petition.

6. Mr.A.V.Arun, learned counsel appearing for the second respondent/management by referring to judgement of the Hon'ble Supreme Court in the case of the Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T.Murali Babu [reported in (2014) 4 SCC 108] submitted that a person who has been inactive and approached the Court at his own leisure or pleasure is not entitled to any relief and the Writ Court rightly dismissed the writ petition on the ground of delay and laches. The Hon'ble Supreme Court in the said decision pointed out that the doctrine of delay and laches should not be lightly brushed aside and the writ Court is required to weigh the explanation offered and the acceptability of the same.

7. Further, it was pointed out that the Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction and as a Constitutional Court, it has a duty to protect the rights of the citizens but simultaneously, it has to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Further it was pointed out that in certain circumstances inordinate delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. In the decision, the Court was considering a case where the respondents/writ petitioners have approached the Court after four years and the Court found that the employee was absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill-health and that the Court is not expected to give indulgence to such indolent persons who compete with "Kumbhakarna" or for that matter "Rip Van Winkle."

8. We agree with the submission of learned counsel Mr.A.V.Arun, who argued that a person who has not been diligent in prosecuting his rights should not be entertained and delay and laches should not be lightly brushed aside.

9. We have heard Mr.L.Chandra Kumar, learned counsel for the appellant/petitioner and perused reasons before us as to why they did not approach this Court earlier. They would state that there were several changes in the representative capacity of the appellant/union during the period from June, 2016 to January, 2018 and only after the authorised representatives who were selected by the workmen were approved, they have taken steps to challenge the order passed by the CGIT. Firstly, to be noted, the appellant herein is a trade union representing the cause of its members who are workers in the second respondent/management. The purpose of forming a trade union is to have a collective bargaining power on behalf of the workmen with the management, as most workmen do not have sufficient educational qualification and most of them are not aware of their rights.

10. Therefore, in our considered view, the case of the appellant stands slightly on a different pedestal. Furthermore, the respondent/management has not attributed any malafides on the part of the appellant to approach the Court belatedly. Further, the doctrine of delay and laches has to be examined on case to case basis and considering the fact that the parties had contested the matter before the CGIT by letting oral and documentary evidence and a speaking award had been passed by the Labour Court, we are of the view that the appellant should not be foreclosed from questioning of the correctness of the award. Thus, considering the peculiar facts and circumstances and noting that appellant is trade union, we are inclined to hold that the delay in filing the writ petition should not be a reason to dismiss the same and writ petition should be heard and disposed of on merits. Though we might have been justified in hearing the writ petition itself, however, we do not want to deny the appellate remedy and therefore, we propose to restore the writ petition to the file of the learned Single Bench.

10. For the above reasons, writ appeal is allowed and the impugned order is set aside and the writ petition is restored to the file of this Court, Registry is directed to place the matter before the appropriate Hon'ble Single Bench of this Court. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrm/ssb

To

1. The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
1st Floor, 'B' Wing,
Shastri Bhavan, Chennai - 6.
2. The Executive Officer,
M/s Bharat Heavy Electricals Limited,
Kailasapuram, Tiruchirapalli - 620 014.
3. The Section Officer,
Writ Section,
High Court, Madras.
4. The Section Officer,
Judicial Section,
High Court, Madras.

+1 cc to M/s.K.Sathiya Murthi, Advocate, S.R.No.9817

+1 cc to M/s.A.V.Arun, Advocate, S.R.No.9842

VSN-II (CO)
SSM(05/03/2019).

W.A.No.1822 of 2018



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