

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.34205 of 2014

The Secretary,
Ministry of Transport Department,
State Government,
Fort St.George,
Chennai-9.

.. Petitioner

Vs.

1.M.Krishnan (Deceased)

2.The Presiding Officer,
II Additional Labour Court,
City Civil Court Annexure Buildings,
High Court Compound,
Chennai-600 104.

3.K.Neelavathi.

Respondents

R3 is substituted as per order dated 04.09.2019
in W.M.P.No.28058/2016 in W.P.No.34205/2014.

PRAYER: This Writ Petition is filed under Article 226 of the
Constitution of India, praying for the issue of a Writ of
Certiorari, to call for the records pertaining to the order
dated 11.10.2010 made in C.P.No.108 of 2009 on the file of the
2nd respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents : M/s.P.Roopavathi for R1.
R2-Labour Court
Mr.R.Subbu Raj
for R3.

O R D E R

The order dated 11.10.2010 in C.P.No.108 of 2009 is sought
to be quashed in the present writ petition.

2. The order impugned in the writ petition is an ex-parte
order passed by the second respondent/II Additional Labour
Court, Chennai in a claim petition filed under Section 33C(2) of

the Industrial Disputes Act. The first respondent/workman died, during the pendency of the litigation, and his wife was impleaded as respondent in the writ petition.

3. The facts in nutshell necessary for deciding the present writ petition is that the first respondent/deceased workman was appointed as Conductor in the erstwhile Tamil Nadu State Transport Department in the year 1965 and he had committed certain cash irregularities and misappropriation, by misusing the tickets handovered by him to the Department on 07.12.1968. The workman was suspended on 07.12.1968 and thereafter, he was terminated from service on 10.02.1971.

4. It is pertinent to state that the industrial dispute was raised by the deceased workman in the year 2001, after a lapse of 30 years from the order of termination. Undoubtedly, there was an enormous delay in raising the Industrial dispute. However, the Labour Court entertained the dispute and ordered compensation of Rs.72,000/- in I.D.No.186 of 2001 dated 11.08.2006 in lieu of reinstatement. The workman also reached the age of superannuation by that time.

5. Against the order passed in I.D.No.186 of 2001, the writ petitioner/Department filed a petition in W.P.No.31358 of 2007 and interim stay was granted by this Court on 27.09.2007. Meanwhile, the workman filed a claim petition under Section 33C (2) of the Industrial Disputes Act in the year 2009, in C.P.No.108 of 2009. The claim petition was allowed by way of an ex-parte order and the writ petitioner/Management was directed to pay a sum of Rs.3,72,000/- on 11.10.2010. It is brought to the notice of this Court that an Interlocutory Application in I.A.No.352 of 2010 in C.P.No.108 of 2009 was filed by the writ petitioner to set aside the ex-parte order. Meanwhile, on 21.12.2011, the writ petition was dismissed as against the workman and the second respondent also, which was filed by the petitioner against I.D.No.186 of 2001. In I.A.No.352 of 2001 in C.P.No.108 of 2009, the Department was ordered to deposit the amount of Rs.1,00,000/- before the Labour Court. The workman filed E.P.No.47 of 2012 to execute the order in I.A.No.352 of 2001. Meanwhile, the present writ petition is filed in the year 2014, to quash the ex-parte order in C.P.No.108 of 2009 dated 11.10.2010.

6. It is brought to the notice of this Court that a sum of Rs.1,86,000/- was deposited before the Labour Court to the credit of C.P.No.108/2009 on 05.02.2015.

7. The learned counsel for the workman states that in the meanwhile, another writ petition was filed by the writ petitioner to set aside the ex-parte order. It is further contended that two writ petitions were filed to set aside the

ex-parte order and such facts are not placed before this Court and the writ petitioner has suppressed the same.

8. This Court is of the considered opinion that the fact remains that workman was terminated in the year 1971. However, the dispute was raised in the year 2001, and the award passed by the Labour Court in I.D.No.186 of 2001 was confirmed. The workman filed claim petition and the same was allowed by way of an ex-parte order. The ex-parte order now under challenge in the present writ petition states that the respondent was called and thereafter, the ex-parte order was passed. Accordingly, the claim of the workman to pay a sum of Rs.3,72,000/- was allowed.

9. This Court is of the view that the writ petitioner, being a Government Department is expected to be vigilant and cautious in dealing such matters where monetary involvements are there. Undoubtedly, there was an enormous delay for filing such dispute by the workman. However, the award was confirmed. No further appeal was filed by the writ petitioner/Management. Under these circumstances, they are expected to be vigilant and follow the rules, so as to avoid any financial loss to the department and defend the cases in the manner known to law. The Transport Department is assisted by many legal brains and there is also a legal section. This being the facility available to the Government Department, it is unfortunate that they allowed the Court to pass an ex-parte order in the claim petition and even there was an improper approach in filing the petition and to set aside the ex-parte order. The way in which the case was dealt with by the writ petitioner/department shows their negligence, dereliction of duty and lapses. In fact, the case was not defended properly, even at the stage of Industrial dispute, and even at the time of filing the claim petition, the department was allowed the Court to pass an ex-parte order and thereafter, so many petitions were filed and even the present writ petition is also filed to set aside the ex-parte order.

10. Under these circumstances, it is a high time that these officials are held responsible and accountable for the monetary loss to the State Ex-chequer. They are bound to work vigilantly and being a trustee, they must be cautious in following the cases pending before the Courts.

11. The ex-parte award was passed and two petitions were filed to set aside the same. Be that as it may, this Court is of the opinion that the workman would be entitled for any amount not on the basis of an ex-parte order, but an order adjudicated on merits. This being the principles to be followed, this Court cannot encourage an ex-parte order for the purpose of implementing the award passed by the Labour Court, which was confirmed. Thus, an opportunity is to be granted. But in the present case, given opportunity was not utilized by the writ

petitioner/Department. Contrarily, they allowed the Court to continue to pass an ex-parte order. This being the factum, the writ petitioner/Secretary to Government, has to initiate appropriate disciplinary action against all the officials, who all are responsible and accountable for any lapses, negligence and dereliction of duty in allowing the Court to pass such ex-parte order, where monetary implications are involved. Thus, this Court is inclined to pass the following orders:

i. The ex-parte order passed by the II Additional Labour Court dated 11.10.2010 in C.P.No.108 of 2009 is quashed.

ii. The II Additional Labour Court is directed to restore the claim petition and hear the matter after affording opportunity to all the parties concerned and pass orders as expeditiously as possible, without causing any undue delay.

iii. The Secretary to Government, Transport Department, Secretariat, Chennai-9 is directed to take appropriate disciplinary proceedings against all the officials, who have committed lapses, negligence and dereliction of duty. Such an exercise is to be done by the Secretary to Government, within a period of four weeks from the date of receipt of a copy of this Order.

iv. The writ petitioner is directed to pay the cost of Rs.5,000/- to the legal heirs of the deceased workman/third respondent within a period of four weeks directly and recover the cost amount from the officials who are all found liable and responsible for such lapses.

12. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

ssb

To

1.The Presiding Officer,
II Additional Labour Court,
City Civil Court Annexure Buildings,
High Court Compound,
Chennai-600 104.

WEB COPY

2.The Secretary,
Ministry of Transport Department,
State Government,
Fort St.George,
Chennai-9.

+1cc to Mr.M.Chidambaram, Advocate SR.82173

W.P.No.34205 of 2014

NRL (CO)
CB(31/10/2019)



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