

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:20.02.2019

Coram
The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.27033 of 2018

R.Kariamal

...Petitioner

vs.

The Management of Raj T.V
Network Ltd.,
No.32, Poes Road, II Street,
Teynampet,
Chennai-600 018

....Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus calling for the records relating to the award dated 11.09.2018 made in I.D.No.92 of 2018, passed by the I Additional Labour Court, Chennai and quash the same and consequently direct the respondent herein to reinstate the petitioner with continuity of service, back wages and all other attendant benefits.

For Petitioner Mr.K.Elango

For Respondent Mr.K.Harishankar

ORDER

The petitioner joined the services of the respondent Management as a driver. He was terminated from service on 18.07.2005. The termination was challenged before the I Additional Labour Court in I.D.No.15 of 2007. The I Additional Labour Court, Chennai, which dealt with the dispute, passed an award dated 12.06.2013, directing the Management to reinstate the petitioner with continuity of service, 50% back wages and all other attendant benefits from 17.07.2005. Thereafter, the petitioner addressed a representation to the Management dated 26.11.2013, requesting the Management to reinstate him in service in terms of the award passed by the I Additional Labour Court.

2.In response to the representation of the petitioner and also in pursuance of the award passed by the I Additional

Labour Court, the Management, vide its letter dated 05.04.2014, reinstated the petitioner as Driver in their office in Mumbai. According to the petitioner, he expressed his willingness to join duty in Mumbai without prejudice to his rights to contest his posting in Mumbai. According to the petitioner in Mumbai, there was no vehicle available for him to drive and the Management also refused to provide him any work and in the said circumstances, the petitioner requested the Management to provide him work in Chennai or in any other place in Tamil Nadu. However, the Management insisted that he should report for duty in Mumbai, by their letter dated 24.05.2014.

3.The Management simultaneously issued a charge-sheet-cum-show cause notice to the petitioner on 02.08.2014, for which, an explanation was given by the petitioner, vide his letter dated 06.08.2014. The petitioner, in the meanwhile, had filed a claim petition in C.P.No.403 of 2014 before the I Additional Labour Court, Chennai, for computation of money value due to him during the period of his deemed employment. Since the Management did not offer any employment to the petitioner in factual terms, the petitioner appears to have raised another dispute on 03.05.2017 under Section 2A of the Industrial Disputes Act, before the Labour Officer, Chennai. During the conciliation proceedings, the Management issued an order dated 15.07.2017 terminating the services of the petitioner with retrospective effect from 16.05.2014. In the said circumstances, the conciliation having failed, the Labour Officer gave his failure report on 17.12.2017.

4.The petitioner's dispute was numbered as I.D.No.92 of 2018 and the petitioner filed his claim statement on 20.04.2018. In the meanwhile, the First Additional Labour Court has also passed an order on 30.01.2018 in C.P.No.403 of 2014 computing the money value due to the petitioner. The Management, on its part, filed its counter statement on 11.07.2018 in I.D.No.92 of 2018. The petitioner filed his proof affidavit on 24.08.2018 and on the same day, the petitioner was examined as W.W.1 and Exs.W1 to W21 were marked on his side. Eventually, the First Additional Labour Court passed an award on 11.09.2018 dismissing the I.D.No.92 of 2018 and the said award is impugned in the present writ petition.

5.According to Mr.K.Elango, the learned counsel appearing for the petitioner, while passing the award the Labour Court has not given any opportunity to the petitioner to make submissions on his behalf and even though the Management was set ex-parte by the Labour Court, unfortunately, the Labour Court has also not heard the petitioner's counsel and simply passed the award.

6.The learned counsel would draw the attention of this Court to the proceedings that preceded the date of the award i.e. 11.09.2018. The details of the Daily Status maintained by the Labour Court as could be seen are that the I.D.was posted for enquiry on 30.07.2018. On that date, both parties were absent and the same was adjourned to 09.08.2018. On 09.08.2018, at the request of the petitioner counsel, time was extended till 24.08.2018. On 24.08.2018, the petitioner was present, proof affidavit was filed. The respondent was absent. W1 to W21 exhibits were marked. For cross-examination, the I.D. was adjourned to 31.08.2018. On 31.08.2018, the petitioner was present, the respondent was absent. Again time was extended till 05.09.2018. Once again on 05.09.2018, the petitioner was present and the respondent was not present and therefore, the Labour Court set the Management ex-parte and evidence was closed and posted for orders on 11.09.2018. Ultimately, on 11.09.2018, the award was passed without hearing the petitioner side. The Daily Status did not mention about the appearance of petitioner or his counsel. In view of the above, the learned counsel would urge this Court that the matter may be remanded back for fresh consideration after giving opportunity to the petitioner, since the award passed by the Labour Court is unsustainable, as the petitioner has been denied due and reasonable opportunity. The Labour Court has committed a grave error in passing the award without hearing the petitioner, particularly when he was diligently prosecuting the case on all the earlier date of hearings.

7.The learned counsel appearing for the respondent/Management has made his submissions, but his submissions are not relevant for the order proposed to be passed by this Court as under:

8.In any event, the Management was set ex-parte in the proceedings before the Labour Court and therefore, they cannot have a much to say before this Court. In view of the Daily Status, as reflected in the documents produced before this Court, the award passed by the Labour Court requires to be interfered with. When the petitioner was present with his counsel on the previous occasions and the Management was set ex-parte on 05.09.2018 and the matter was posted for orders on 11.09.2018, the Labour Court ought to have heard the petitioner before passing the award. Unfortunately, from the Daily Status, this Court is unable to discern as to why the Labour Court has hurriedly passed the award without hearing the petitioner. Nothing is stated in the Daily Status about the absence of counsel or the petitioner himself, on 11.09.2018. In the absence of such details, this Court has come to an irresistible conclusion that the First Additional Labour Court has passed an award in violation of the established procedure, by not hearing

the petitioner, when the petitioner has been diligently prosecuting the case.

9. When the Labour Court has particularly chosen to pass an adverse award, it ought to have provided opportunity of hearing to the petitioner before taking a decision. Unfortunately, the Labour Court has passed an award as if the petitioner was absent and he need not require to be heard. Such a procedure adopted by the Labour Court is per se violative of the established principles of natural justice and therefore, the award passed by the First Additional Labour Court cannot be sustained even for a second.

10. In view of the above, the impugned award passed by the First Additional Labour Court, Chennai, dated 11.09.2018, in I.D.No.92 of 2018, is hereby set aside. The matter is remanded back to the First Additional Labour Court for fresh consideration. The First Additional Labour Court is directed to pass an award after giving due and reasonable opportunity to the petitioner. The First Additional Labour Court is also directed to expeditiously dispose of the I.D.No.92 of 2018, but not later than six months from the date of receipt of copy of this order. It is made clear that in case, the Management wants to file any application seeking to set aside the ex-parte order, the same may be considered by the Labour Court on its merits and in accordance with law.

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

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msk

To

The I Additional Labour Court,
Chennai

+1cc to Mr.K.Elango, Advocate, S.R.No.15477

W.P.No.27033 of 2018

rrs 28/03/2019