

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No. 19319 OF 2017

ORDER:

Heard Sri M.Vijaya Kumar Goud, learned counsel for the petitioner and the learned Government Pleader for Services-III. With the consent of learned counsel for the respective parties, this writ petition is being disposed of at the admission stage.

This writ petition is filed seeking the following relief :-

“.....Writ Of Certiorari by setting-a-side the award in I.D.No.73 of 2007 dt.13-09-2017, consequently set aside the orders passed in I.A.No.146 of 2016 in I.D.No.73 of 2007 dt.31.03.2017 dismissing the condone delay of days 3190 caused in filing the set-a-side petition by the Res.No.3 as illegal, arbitrary and against principles of natural justice and call for the records and pass such other or orders.....”

It has been contended by the petitioner that he was initially appointed as NMR worker with the respondents and while he was discharging his duties, respondents have illegally terminated his services without conducting any enquiry and without giving any opportunity to the petitioner. Challenging the said order of termination, the petitioner has filed ID.No.73 of 2007 before the 3rd respondent under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') and the 3rd respondent vide order dated 13.09.2017 dismissed the said ID, for default, as the petitioner failed to attend the case on the said date owing to various problems and financial difficulties. Thereafter, the petitioner has filed an application in I.A.No.146

of 2016 seeking restoration of ID.No.73 of 2007 by condoning the delay of 3190 days in filing the said I.A.No.146 of 2016 for restoration of ID. But the 3rd respondent, without appreciating any of the contentions raised by the petitioner, mechanically dismissed the said I.A. vide order dated 31.03.2017. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner contends that the 3rd respondent ought to have considered the case of the petitioner basing on the material available on record and on merits under Section 11-A of the Act before dismissing the I.D.No.73 of 2007 and I.A.No.146 of 2016 in I.D.No.73 of 2007 filed by the petitioner. Therefore, he contends that appropriate orders be passed in the writ petition remanding the matter to the 3rd respondent for fresh adjudication on merits by setting aside the orders passed in I.D.No.73 of 2007 and I.A.No.146 of 2016 in I.D.No.73 of 2007. In support of his contentions, learned counsel relied on the judgment of the Hon'ble Supreme Court in Civil Appeal No.5649 of 2018 and Civil Appeal No.5893 of 2012 in ***M/s. Haryana Suraj Malting Ltd vs. Phool Chand***, wherein the Honble Supreme Court held as under:

“Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity

cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when was set *ex parte*, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not *functus officio* after the award has become enforceable as far as setting aside an *ex-parte* award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour/Tribunal, whether we call it ancillary, incidental or inherent.”

Learned Government Pleader appearing for the respondents contends that the claim of the petitioner is time barred and he has approached the 3rd respondent for restoration of I.D.No.73 of 2007 with a long delay of 3190 days and hence, the 3rd respondent has rightly dismissed the said IA vide order dated 31.03.2017. Therefore, he contends that there are no merits in the writ petition and the same is liable to be dismissed.

Having regard to the rival submissions made by the learned counsel appearing for the respective parties and in view of the judgment rendered by the Hon’ble Supreme Court in ***M/s. Haryana Suraj Malting Ltd vs. Phool Chand*** (supra), this Court is of the considered view that in the interest of justice, it would be appropriate to set aside the orders passed by the 3rd respondent-cum-Labour Court in I.D.No.73 of 2007 dt.13.09.2017 and in I.A.No.146 of 2016 in

I.D.No.73 of 2007 dt.13.03.2017 and the matter be remanded to 3rd respondent for fresh adjudication, on merits, after giving necessary opportunity to all the parties.

With the above observations, this writ petition is disposed of. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 08-11-2019
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