

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/2/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal Nos.1469 of 2015 and 3417 of 2019

S. Meenakshi Sundaram ... Appellant/Petitioner
in both the appeals

Vs

1. The Presiding Officer
I Additional Labour Court
Chennai.
2. The Management
of M/s. Kwaliti Precision Products (P) Ltd
Plot No.43 (NP) SIDCO Estate
Post Box No.31 Ambattur
Chennai 600 098. ... Respondent/Respondents
in both the appeals

Appeal filed under Clause 15 of Letters Patent Act against the order dated 1/8/2012 made in W.P.Nos.4051 and 4052 of 2008.

PRAYER IN WP.NO. 4051 OF 2008: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of certiorarified of Mandamus after calling for the records from the 1st respondent impugned order made in No. 1266 of 1992, dated 06.07.95 and quash the same and consequently direct the 2nd respondent to pay back wages and all other attendant benefits from 06/05/92 to 07/10/92 to the petitioner was re instated in service.

PRAYER IN W.P.No. 4052 of 2008: Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified mandamus Calling for the records from the 1st respondent impugned order made in I.D.No. 670/99 dated 14.09.2007 and quash the same and consequently direct the 2nd respondent to re-in-state the petitioner in service with back wages and all other attendant benefits from 21/09/93 onwards.

For appellant ... Mr.R.Thanjan

For respondents ... R.1 - Labour Court
Mr.N.Manokaran

for R.2.

C O M M O N J U D G M E N T

SUBRAMONIUM PRASAD,J

These two writ appeals had directed against the common order, dated 1/8/2012, passed in W.P.Nos.4051 and 4052 of 2008, whereby, the learned Single Judge by the impugned judgment herein rejected the challenge of the appellant herein to the order dated 6/7/1995 in I.D.No.1266 of 1992 and an order dated 14/9/2007 in I.D.No.670 of 1999 passed by the labour Court. The learned Single Judge, rejected the challenge to I.D.No.1266 of 1992, as barred by time and rejected the plea of reinstatement made in I.S.No.670 of 1999. However, the learned Single Judge, has enhanced the compensation granted by the Labour Court in I.D.No.670 of 1999, from Rs.60,000/- to Rs.1,25,000/-.

2. Dissatisfied with the order of the learned Single Judge, appellant has come up by way of the instant writ appeals.

3. Facts leading to the writ appeals are:-

a. Appellant/writ petitioner entered the service of the respondent in the year 1980, claiming that he was not permitted to enter into the premise of the Company on and from 6/5/1982. The appellant raised an Industrial Dispute in I.D.No.1266 of 1992 before the II Additional Labour Court, Chennai and award was passed in his favour.

b. Even before the award was passed, the petitioner had already been reinstated in service. The Labour Court in the award dated 6/7/1995, refused to grant backwages, on the ground that the respondent Management was not responsible for non-employment of the petitioner.

c. Appellant/writ petitioner, then claimed that he was once again stopped from entering into the premises on 21/9/1993. The petitioner states that the petitioner was transferred to another Department without any written letter.

d. A show cause notice was issued for which the petitioner had sent an explanation. However, the petitioner was later terminated from service.

e. Order of termination became cause of I.D.No.670 of 1999 on the file of the I Additional Labour Court, Chennai. The Labour Court, by its award, dated 14/9/2007, found that the petitioner without any reason stayed away from duty and

refusal to work. The Labour Court found that the petitioner admitted that he stayed away from duty and therefore, the labour Court held that there was no need to conduct any enquiry when the petitioner had himself admitted his disobedience. The Labour Court, held that refusal to work at the place assigned amounts to disobedience as per Clause 6 (2) of the Standing Orders. Labour Court held that conduct of the petitioner dis-entitled him from being reinstated. However, the labour Court held that there was no order of termination and therefore, granted Rs.60,000/- as compensation.

f. Order refusing backwages in I.D.No.1266 of 1992, dated 6/7/1995 and the order refusing reinstatement of the petitioner and granting only compensation in I.D.No.670 of 1999, dated 14/9/2007 were the subject matter of the two writ petitions.

4. The learned Single Judge by the impugned order found that the writ petition challenging the order dated 6/7/1995 in I.D.No.1266 of 2009, refusing backwages to the petitioner has been filed after thirteen years and therefore, the learned Single Judge dismissed the writ petition only on the ground of delay and latches. The learned Single Judge found that there was no sufficient ground for explaining inordinate delay of 13 years in challenging the award. While considering the challenge to the award dated 14/9/2007 in I.D.No.670 of 1999, the learned Single Judge found that even though proper enquiry was not held, the charges stood proved before the Labour Court. The learned Single Judge found that the order refusing to reinstate the writ petitioner is not perverse and therefore, does not require any interference. However, the learned Single Judge, enhanced the amount of compensation from Rs.60,000/- to Rs.1,45,000/-.

5. Orders of the learned Single Judge are under challenge before us in the instant writ appeals.

6. Heard Mr.R.Thanjan, learned counsel for the appellant and Mr.N.Manokaran, learned counsel for the second respondent.

7. W.A.No.1469 of 2015 challenges the order in W.P.No.4051 of 2008, to the award dated 6/7/1995 made in I.D.No.1266 of 1992, whereby the labour Court had denied backwages to the appellant from 6/5/1992 to 7/10/1992. Award has been filed before the learned Single Judge after thirteen years. A perusal of the writ petition would show that there is no sufficient reason at all to condone the delay of 13 years in filing the writ petition. It is well settled that delay defeats equity. An employee must approach the Courts within the reasonable time challenging the award. Inordinate delay of 13 years and that too without any reason cannot be condoned and we do not find any infirmity in the order of the learned Single Judge declining to condone the delay of 13 years in entertaining the writ petition against I.D.No.1266 of

1992 dated 6/7/1995. W.A.No.1469 of 2015 is dismissed.

8. The principle challenge in the grounds of appeals in W.A.No.3417 of 2019 is that the appellant had worked for thirteen years and he cannot be deprived of his employment without holding any proper enquiry. It is also stated in the memorandum of petition that the appellant was neither given the termination order nor was any paper publication for his absentia from duty.

9. A perusal of the award dated 14/9/2007 would show that the labour Court had gone in detail into the facts of the case. On perusing the evidence, the labour Court found that the appellant was working in the Stores Department for which the appellant asked the management to give the written letter. The Labour Court found that it shows insubordination on the part of the appellant.

10. The Labour Court on the basis of the evidence found that the appellant had stayed away from duty from 21/9/1993 and was therefore, guilty of willful insubordination and disobedience. The Labour Court also found that the appellant himself had admitted that he had voluntarily stayed away from duty. The Labour Court, therefore, found that when the appellant himself had doesn't want to work, no useful purpose would be served by reinstating the petitioner, a view which has been accepted by the learned Single Judge.

11. In view of the above observation, we do not find that the order of the Labour Court as accepted by the learned Single Judge is so perverse that it warrants interference while considering the intra Court appeal. It

is well settled that while testing an order under Article 226 of the Constitution of India even if there is a plausible view, the writ Court will not substitute its non-conclusion to the one arrived at by the Tribunal unless the order is completely perverse against a statute or based on its evidence.

12. During the course of argument, learned counsel for the Management stated that the respondent firm has closed down and the said fact is not disputed by the learned counsel for the appellant. In view of the fact that organisation itself has closed down, no useful purpose would be served in directing any reinstatement.

13. However, since the services of the appellant had been terminated, without there being any valid termination order, we find that interest of justice would be served by further increasing the compensation from Rs.1,25,000/- to Rs.2 lakhs.

14. Writ Appeal No.3417 of 2019 is allowed in part. Order of the learned Single Judge enhancing the compensation of Rs.1,25,000/- is modified by increasing the compensation to Rs.2,00,000/-.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

mvs.

To

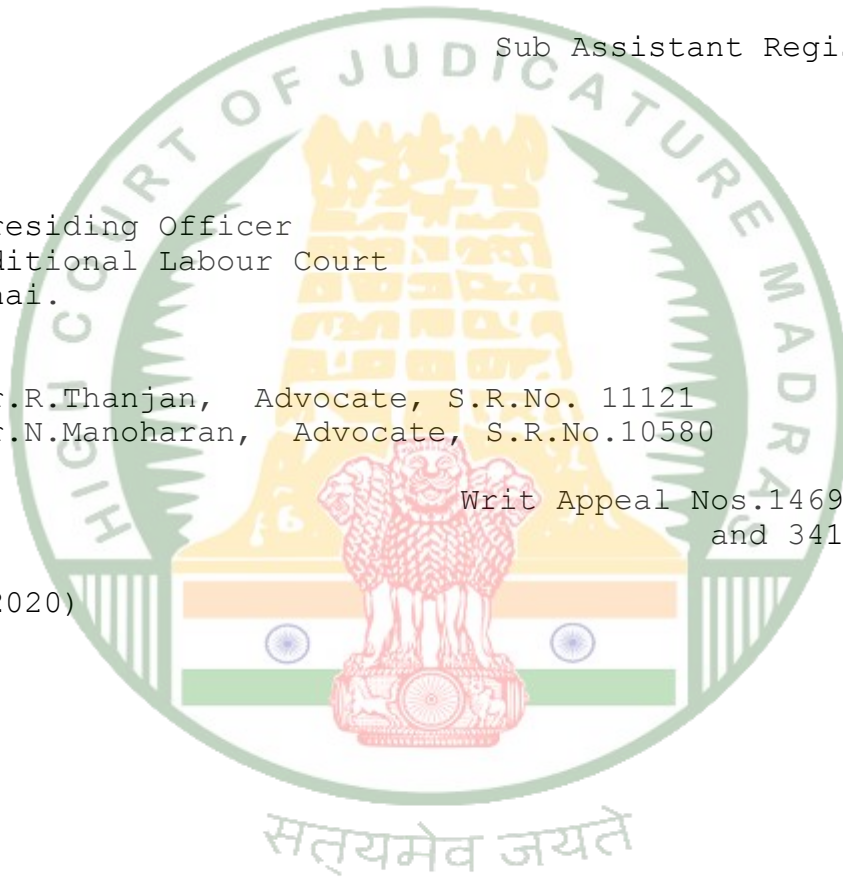
1. The Presiding Officer
I Additional Labour Court
Chennai.

+2cc to Mr.R.Thanjan, Advocate, S.R.No. 11121

+2cc to Mr.N.Manoharan, Advocate, S.R.No.10580

Writ Appeal Nos.1469 of 2015
and 3417 of 2019

GJ(CO)
GN(02/03/2020)



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