

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.01.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.13090 of 2015

and

M.P.No.1 of 2015

The Management of Balu Exports,
Rep. by its Managing Partner-A.Jegadeesan,
Kunnakkan Palayam,
Thirupur. ... Petitioner

vs

1. Deputy Commissioner of Labour,
Labour Department,
Dr.Balasundaram Road,
Coimbatore.
2. Sivasankar @ Sivasankara Narayanan
S/o Namasivayam ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records of the 1st respondent in I.A.No.24 of 2014 in E.C.No.38 of 2002 and quash its order dated 15.12.2014.

For Petitioner : Mr.S.Ravindran, Senior Counsel
for Mr.S.Bazeer Ahamed

For Respondents: Mr.D.Suriyanarayanan,
Additional Government Pleader for R1
No appearance for R2.

O R D E R

This Writ Petition is filed challenging the order of the 1st respondent made in I.A.No.24/2014 in E.C.No.38/2002 dated 15.12.2014, wherein and whereby, the 1st respondent condoned the delay of 4165 days and restored E.C.No.38/2002 on file to decide the same on merits.

2. The case of the petitioner is as follows:

The 2nd respondent is not the employee of the petitioner Firm. However, he filed an application for compensation under Employee Compensation Act on 15.10.2001 before the 1st respondent alleging that while he was in employment of the petitioner on 07.01.1997 and that he met with an accident resulting in permanent disability. The said application in

I.A.No.54/2001 itself was filed with a delay of 736 days. In spite of the petitioner's objection, the delay was condoned and the main application in E.C.No.38/2002 was taken on file. The petitioner filed its counter statement denying its liability. The said E.C.No.38/2002 was dismissed for default on 23.12.2002, as the 2nd respondent did not pursue the matter after examining himself as a witness and got cross examined by the petitioner Management. After two years, the 2nd respondent filed an application to restore E.C.No.38/2002. The said application in I.A.No.2/2005 was filed with a delay of 664 days. The said application was dismissed on 28.04.2005 on the reason that the 2nd respondent herein did not file an affidavit stating the reasons for filing I.A.No.2/2005 with such delay. Thereafter, the 2nd respondent filed another application in I.A.No.24/2014 i.e., nearly after 9 years from the date of dismissal of I.A.No.2/2005, again to condone the delay of 4165 days for restoring E.C.No.38/2002. The said application filed was allowed by the 1st respondent and thus, the present writ petition is filed.

3. In this writ petition, though notice was ordered to the 2nd respondent and served on him, he has not chosen to appear either in person or through counsel. His name is printed in the cause list today. None appears for the 2nd respondent.

4. Learned senior counsel appearing for the petitioner submitted that first of all, the 2nd respondent is not an employee of the petitioner at any point of time and therefore, his claim petition is not at all maintainable. Apart from saying so, the learned senior counsel submitted that when the original Claim Petition was dismissed for default on 23.12.2002 and the Application filed to restore the same in I.A.No.2/2005 was also dismissed on 28.04.2005, the 2nd respondent is not entitled to file another application to condone the delay for restoring the Claim Petition once again and therefore, the 1st respondent ought not to have entertained the said application at all, as the second application is barred by the principles of res judicata. He further submitted that if at all the 2nd respondent is aggrieved, he ought to have challenged the order made in I.A.No.2/2005 dated 28.04.2005 before the appropriate forum.

Learned senior counsel further submitted that without doing so, the 2nd respondent is not entitled to pursue the matter before the 1st respondent by filing repeated applications.

5. Learned Additional Government Pleader supported the order of the 1st respondent by stating that by condoning the delay, the petitioner herein is not prejudiced in any manner.

6. Heard both sides.

7. Since the 2nd respondent, who is the contesting party has not chosen to appear before this Court, inspite of notice, this Court is left with no other option except to decide the matter, based on the materials available on record.

8. It is seen that the 2nd respondent claiming to be the employee of the petitioner, filed a Claim Petition before the 1st respondent on 15.10.2001, based upon an accident alleged to have taken place on 07.01.1997. A counter affidavit was filed by the petitioner as the respondent therein specifically stating that there is no employer-employee relationship between the applicant and the opposite party at any point of time. It is also stated therein that the 2nd respondent herein had never worked in the petitioner's establishment even for a single day. When such being the stand taken by the petitioner Management, the matter was taken up for consideration by the 1st respondent and the claimant's examination himself as witness alone had taken place. Thereafter, he did not pursue further. Ultimately, the said Claim Petition came to be dismissed for non-prosecution on 23.12.2002. The 2nd respondent has filed I.A.No.2/2005 to restore the main Claim Petition. It is to be noted at this juncture that the very main Claim Petition itself was filed with a delay of 736 days and the application to restore such claim petition in I.A.No.2/2005 was also filed with a delay of 664 days. The 1st respondent, by order dated 28.04.2005 dismissed I.A.No.2/2005 on the reason that the 2nd respondent did not file any affidavit in support his claim seeking condonation of the delay in filing the restoration petition. Therefore, in effect, the main Claim Petition which was originally dismissed for default on 23.12.2002 is not taken on file and on the other hand, by way of dismissing I.A.No.2/2005, refusing to restore the main Claim Petition, the earlier order passed on 23.12.2002 was sustained. It is stated that the 2nd respondent herein did not make any attempt to challenge the said order made in I.A.No.2/2005. Hence, the said order has become final and binding on the parties. Therefore, he is not entitled to file a fresh I.A., again for the same cause of action. However, in this case, the 2nd respondent, without challenging the order made in I.A.No.2/2005 and allowing the said order to become final, conclusive and binding on him, has chosen to file a fresh application in I.A.No.24/2014, that too, for condoning the delay of 4165 days, which in my considered view is not maintainable in the eye of law as such application is certainly barred by principles of res judicata. The 1st respondent failed to consider the above aspects and allowed the application only on the sympathy ground. I have already pointed out that at every stage, the 2nd respondent had approached the authority with inordinate delay. I have also pointed out that the Claim Petition was dismissed as early as on 23.12.2002 and such Claim Petition was not restored at any point of time. On the other hand, in view of the order passed in I.A.No.2/2005, such dismissal has become final, conclusive and binding on the 2nd respondent. Under such circumstances, the second application filed before the

1st respondent in I.A.No.24/2014 is not maintainable. Therefore, the 1st respondent is not justified in allowing the application.

9. Accordingly, I find that the petitioner is entitled to succeed in this writ petition. Thus, the Writ Petition is allowed and the impugned order is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Presiding Officer
Industrial Tribunal
Chennai-600 104.

2. Deputy Commissioner of Labour,
Labour Department,
Dr.Balasundaram Road,
Coimbatore.

+1cc to Mr.S.Bazeer Ahemed , Advocate SR.No. 3354
W.P.No.13090 of 2015

A.SK(06/02/2020)

सत्यमेव जयते
WEB COPY