

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 4638 of 2020

and

W.M.P. Nos. 5501 and 5502 of 2020

1. The Principal Chief Conservator of Forests
Head of Department No.1
Jeenis Road, Panagal Maligai
Saidapet, Chennai - 600 015.
2. The Additional Principal Conservator of Forests
Dharmapuri Circle
Dharmapuri District - 5.
3. The District Forest Officer
Mathigiri Hosur
Krishnagiri - 635 110. Petitioners

-vs-

K.Vijayan ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Presiding Officer, Labour Court, Salem in I.D. N. 57/2011, dated 26.09.2013 and quash the same.

For Petitioners: Mr. S.Prabhu
Additional Government Pleader (Forest)

For Respondent : Mr. M.R.Jothimanian

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(through video conference)

Heard Mr. S.Prabhu, Learned Additional Government Pleader (Forest) for the Petitioners and Mr. M.R.Jothimanian, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. This Court during the earlier hearing on 30.07.2020 has passed the following self-explanatory order:-

" The Petitioners are officials of the Forest Department of the Government of Tamil Nadu. According to the Petitioners, the Respondent had worked as Daily Wage Mazdoor in the year 1998 during seasonal months in plantations and nurseries of the Forest Department, but was not under any regular appointment in a sanctioned post under the Service Rules. The Respondent had raised an industrial dispute in I.D. No. 67 of 2011 before the Labour Court, Krishnagiri under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short) for reinstatement and continuity in service along with backwages and attendant benefits. The Petitioners resisted the claim of the Respondent contending that the Forest Department of the Government of Tamil Nadu was not 'industry' for the purpose of the Act and that the Respondent was not entitled to any relief claimed. Though a Counter has been filed in I.D. No. 67 of 2011 before the Labour Court, the Petitioners had not been represented at the time when evidence was recorded, which lead to passing of an exparte award dated 26.09.2013 directing the Petitioners to reinstate the Respondent with continuity of service and 40% backwages and all other attendant benefits. The Petitioners made an application in I.A. No. 28 of 2015 to condone the delay of 288 days in filing the application to set aside that exparte award before the Labour Court, but it was dismissed by an order dated 14.09.2015 following the ruling of the Two Judges Bench of the Hon'ble Supreme Court of India in Sangham Tape Co., -vs- Hans Raj [(2005) 9 SCC 331] on the premise that the Labour Court becomes functus officio after 30 days from the date of publication of award and could not thereafter entertain any application to set aside exparte award.

2. While the matter stood as narrated supra, the Respondent had on 06.12.2019 filed the Writ Petition in W.P. No. 35531 of 2019 before this Court for directing the Petitioners to reinstate the Respondent as Plot Watcher and pay all other monetary benefits in terms of the award dated 26.09.2013 in I.D. No. 67 of 2011 passed by the Labour Court and appoint him as Plot Watcher in a supernumerary post created under G.O. (Ms) No. 95, Environment and Forests (FR.2) Department dated 07.08.2009. It was only after receipt of notice in that Writ Petition that the Petitioners have on 29.01.2020 filed the instant Writ Petition challenging the award dated 26.09.2013 in I.D. No. 67 of 2011 passed by the

Labour Court. It also requires to be noticed here that in the interregnum, the Three Judges Bench of the Hon'ble Supreme Court of India in Haryana Suraj Malting Limited -vs- Phool Chand [(2018) 16 SCC 567] has taken the view that the Labour Court functioning under the Act does not become functus officio on publication of the award and an application to set aside an exparte award could be entertained, if sufficient cause is shown within a reasonable time for non-appearance when the party was set exparte.

3. Learned Additional Government Pleader appearing for the Petitioners placing strong reliance on that authoritative pronouncement of the Hon'ble Supreme Court of India, which now holds the field, contends that the exparte award requires to be set aside and the matter sent back for fresh consideration. On the other hand, Learned Counsel for the Respondent vehemently opposes the claim for setting aside the award by highlighting that the concerned officials of the Forest Department of the Government of Tamil Nadu had not been diligent enough in following up legal proceedings effectively throughout and this Court has refused to show any indulgence in their favour in respect of cases relating to persons similarly placed to the Respondent in the order dated 10.07.2017 in W.P. No. 20854 of 2012, the order dated 29.03.2019 in W.P. No. 7914 of 2011 and the order dated 05.09.2019 in W.P. No. 15722 of 2019, and that the Respondent has to be treated on par with those persons and could not be deprived of the benefits of the award of the Labour Court for no fault on his part.

4. On a careful consideration of the rival submissions, it cannot be lost sight of the fact that the grant of relief for reinstatement in service with other benefits is personal to the litigant of a particular case depending upon the specific facts proved in evidence before the industrial adjudicator and there cannot be any generalized extension of benefit merely because it has been granted to some other litigants. It is evident from the impugned award that the relief granted to the Respondent is based only on his evidence and the Petitioners had not rebutted the same or placed any contra evidence to establish that he was disentitled to such claim. Having due regard to the law governing employment in public services, the nature of relief that had been sought by the respondent certainly requires to be determined with reference to the relevant legal principles including satisfaction of the criteria prescribed for selection to posts in public services and

ought not to be granted merely because the Petitioners had failed to defend the same. However, the inordinate delay in filing the application to set aside the exparte award as well as the laches in approaching this Court by way of this Writ Petition, and that too, after the Respondent had filed the Writ Petition in W.P. No. 35531 of 2019 for claiming the benefits of that award reveals that the Petitioners and other concerned officials have not shown the requisite importance for conducting legal proceedings, especially when it also entails severe financial ramifications on the public exchequer. In this context, reference must be made to the decision of the Hon'ble Supreme Court of India in State of Karnataka -vs- Y. Moideen Kunhi [(2009) 13 SCC 192] where it has been explicated as follows:-

"22. The expression "sufficient cause" as appearing in Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") must receive a liberal construction so as to advance substantial justice as was noted by this Court in G. Ramegowda -vs- Special Land Acquisition Officer [(1988) 2 SCC 142 : AIR 1988 SC 897] . Paras 16-17 of the judgment reads as follows: (SCC pp. 148-49)

"16. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

17. Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have 'a little play at the joints'. Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in

all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process. In the opinion of the High Court, the conduct of the law officers of the Government placed the Government in a predicament and that it was one of those cases where the mala fides of the officers should not be imputed to Government. It relied upon and trusted its law officers. Lindley, M.R., in *National Bank of Wales Ltd. In re* [LR (1899) 2 Ch 629 (CA)], observed, though in a different context: (Ch p. 673)

'... Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them.' "

23. Keeping in view the importance of questions of law which are involved we are inclined to condone the delay subject to payment of exemplary costs which we fix at rupees ten lakhs to be paid within a period of eight weeks to the respondents. The delay is condoned subject to the payment of the aforesaid amount as costs. After making the payment the receipt thereof shall be filed before this Court along with an affidavit. Only after the payment is made the special leave petitions shall be listed for admission. We make it clear that we have not expressed any opinion on the merits of the case.

24. It is imperative that the State shall immediately initiate action as available in law against every person responsible for the alleged fraud and delay in pursuing the remedies, fix responsibility and recover the amount paid as costs from them. Needless to say, orders shall be passed in this regard by the competent authority after grant of opportunity to the person(s) concerned. If any action under criminal law(s) is to be taken, same shall be taken."

Viewed from the perspective of the aforesaid observations of the Hon'ble Supreme Court of India, which squarely applies to the facts of this case as well, though the exparte award calls for interference, it is equally imperative that exemplary costs would have to be imposed on the Petitioners for the casual and cavalier manner in which the matter has been handled by the dealing officials.

5. In that backdrop, Learned Counsel for the Respondent agrees that on payment of costs of Rs.1,00,000/- for compensating the ordeal undergone and hardship suffered by the Respondent all these years, the impugned award in I.D. No. 67 of 2011, which has been passed exparte by the Labour Court may be set aside and

the matter remitted for fresh adjudication without prejudice to the rights and contentions of the Respondent on the merits of the industrial dispute raised by him. The Petitioners shall make payment of the aforesaid sum by way of demand draft in favour of the Respondent under written acknowledgement and report compliance in the Registry by 28.08.2020.

Post the matter for passing further orders on 31.08.2020."

It is informed today by the Learned Additional Government Pleader (Forest) for the Petitioners that the aforesaid condition imposed by this Court has been complied by the Petitioners and that the Respondent has received a sum of Rs. 1,00,000/- towards cost and has filed a proof for the same.

3. In view of the foregoing discussion and in order to shorten the litigation, the impugned exparte award dated 26.09.2013 in I.D. No. 57 of 2011 passed by the Labour Court, Salem (hereinafter referred to as the 'Labour Court' for short), is set aside and I.D. No. 57 of 2011 is restored to file, and the matter shall be posted for the next hearing on 07.10.2020 before the Labour Court. The parties shall attend the hearing on the said date as well as on the subsequent dates to which it is adjourned and extend their co-operation for the expeditious disposal of the matter. It shall be ensured that there is atleast one effective hearing every week showing progress of the matter. After hearing all parties concerned following the prescribed procedure, the Labour Court shall dispose the same on merits and in accordance with law. Though obvious, it is made clear that no view has been expressed by this Court on the merits of the contentious issues between the parties.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

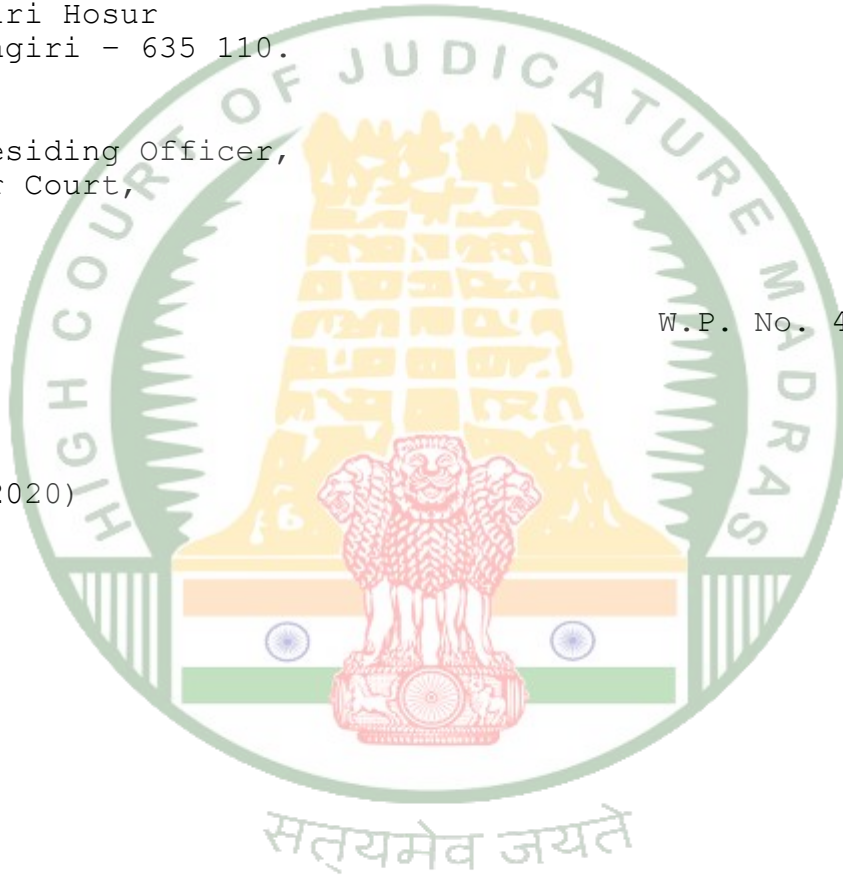
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Copy to

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Mathigiri Hosur
Krishnagiri - 635 110.
4. The Presiding Officer,
Labour Court,
Salem.

W.P. No. 4638 of 2020

SSV(CO)
GN(09/09/2020)



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