

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.01.2020
CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.33939 of 2015
and
MP No.1 of 2015

The Management,
Golden Transport,
346, M.P.C. Salai,
Thirutani 631 209.

...Petitioner

Vs.

1.N.Kumar

2.The Presiding Officer,
The Second Additional Labour Court,
Chennai.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari to call for the records relating to the proceedings of the second respondent in I.A.No.327 of 2013 in I.D.No.211 of 2016 dated 04.04.2014, quash the same.

For Petitioner : Mr.K.Rajasekaran
For Respondent : R1-No Appearance
R2-Court

सत्यमेव जयते
O R D E R

This writ petition is filed challenging the order of the Labour Court made in I.A.No.327 of 2013 in I.D.No.211 of 2006 dated 04.04.2014. The said I.A. was filed by the petitioner Management seeking to condone the delay of 336 days to set aside the exparte award dated 02.08.2012.

2. Facts and circumstances of the case go this way:

The first respondent herein claiming to be the Workman under the petitioner Management filed Industrial Dispute No.211 of 2016 on the file of the second respondent seeking for reinstatement of his service with backwages, continuity of service and other attendant benefits. In the

said Industrial Dispute, an award came to be passed on 02.08.2012, wherein and whereby, the Labour Court found that the denial of employment to the first respondent herein was illegal and consequently, he is entitled to the relief of reinstatement into service with 25% of backwages, continuity of service and other attendant benefits. Claiming the said award as an exparte award, the petitioner Management filed I.A.No.327 of 2013 to condone the delay of 336 days in filing the set aside petition. The Labour Court dismissed the said application on the reason that the award passed on 02.08.2012 was not an exparte award and on the other hand, it is the award passed on merits and therefore, the petition filed to set aside the said award is not maintainable. Hence, the present writ petition is filed against the said order.

3. In this writ petition, though notice was issued and served on the first respondent/Workman, he has not chosen to appear either in person or through counsel. His name is printed in the cause list.

4. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. The petitioner Management claims that the award of the Labour Court dated 02.08.2011 is an exparte award. Therefore, they seek to set aside the same, however by filing such application with 336 days delay. First of all, it has to be seen whether the award is an exparte award. Perusal of the award, which is made available in the typedset of papers, before going into the merits of the matter, more particularly, the very preamble of the said award would clearly indicate that it was passed after hearing the counsels appearing on both sides. Moreover, the Labour Court discussed the pleadings of the respective parties as well as the evidence let in on both sides. Therefore, it is not correct to say that it is an exparte award. When such being the factual position, the petitioner is not justified in filing the application to set aside the said award passed on merits, by claiming it to be an exparte award. The Labour Court has rightly rejected the application by holding that the said application is not maintainable. If at all the petitioner is aggrieved against the award dated 02.08.2011, it is for them to work out their remedy by challenging the said award. Without doing so, they ought not to have filed the application to set aside the said award.

6. Considering the fact that the said application was filed immediately after the award and further considering

the fact that the Labour Court dismissed the said application and that this Court entertained writ petition and the same is kept pending all along and further considering the fact that the first respondent has not chosen to come forward to put forth his case, this Court is of the view that the interest of justice would be met, if liberty is given to the petitioner Management to challenge the said award by filing appropriate proceedings. Thus, by granting such liberty, this writ petition is dismissed. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

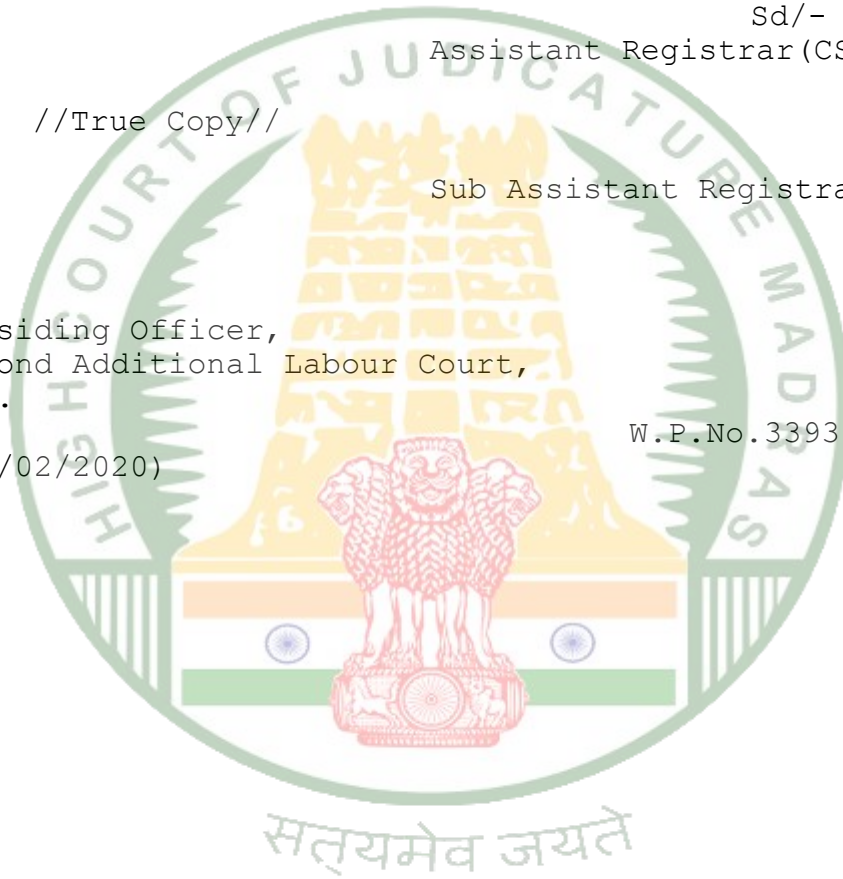
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Sub Assistant Registrar

vri
To
The Presiding Officer,
The Second Additional Labour Court,
Chennai.

W.P.No.33939 of 2015

A.SK(06/02/2020)



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