



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2020

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.5513 of 2014

P.Azhagarsamy

.. Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
District Court Building,
Tiruchirappalli.

2.The Management,
Tamil Nadu State Transport Corporation
Madurai Division IV,
Dindigul.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent pertaining to I.A.416 of 2009 in I.D.75 of 1999, quash the same and in consequence direct the 1st respondent to take up for trial the petition filed to set aside the exparte award passed in I.D.75 of 1999 and pass such further or other orders.

For Petitioner	: Mr.T.Ravichandran
For Respondent No.2	: Mr.J.Senthil Kumaraiah
R 1	: Court

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent pertaining to I.A.416 of 2009 in I.D.75 of 1999, quash the same and consequently direct the 1st respondent to set aside the ex parte award passed in I.D.75 of 1999 and take up the same for trial.

2.The case of the petitioner is that the petitioner has raised an Industrial Dispute challenging the order of dismissal and prayed for reinstatement with continuity of service and backwages. The said Industrial Dispute had been numbered as I.D.No.75 of 1999 on the file of the first respondent. When the case was posted on 07.11.2008 for hearing, since the petitioner went to Chennai to attend a condolence, he was not able to attend the hearing and therefore, he was set ex parte. Thereafter, the petitioner had filed the present application, i.e., I.A.No.416 of 2009 before the first respondent Court with a prayer to condone the delay of 243 days in filing the petition to set aside the ex parte award. The said application in I.A.No.416 of 2009 has been dismissed by the the



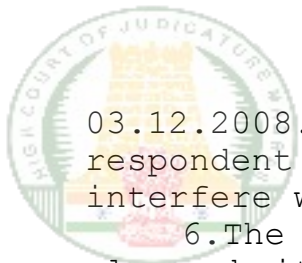
first respondent vide impugned order dated 31.08.2012. Challenging the same, the present Writ Petition has been filed.

3.The learned counsel appearing for the petitioner would submit that the petitioner was not able to attend the hearing due to condolence in his relative's house at Chennai and when he returned from Chennai he got ill and was taking treatment and therefore, he could not contact his counsel. Thereafter, the petitioner had filed the present application to condone the delay of 243 days for restoration of the dismissed Industrial Dispute. The said application should have been entertained and the delay could have been condoned by the first respondent, as otherwise the petitioner would loose the chance of getting the Industrial Dispute raised before the Labour Court decided on merits. Further, the first respondent Labour Court has dismissed the application filed by the petitioner on the ground that the *ex parte* award has been sent for publication on 03.12.2008 and therefore, the Labour Court was not in a position to accept the reason for the absence of the petitioner, as the Court has become *functus officio* under Section 17A of the Act.

4.The learned counsel appearing for the second respondent would also rely upon the following Judgments of the Hon'ble Apex Court as well as this Court:

- (i) Grindlays Bank v. CGIT [1980 (Supp) SCC 420].
- (ii) eneral Manager Telecom v. A.Srinivasa Rao & Others [1997 (8) SCC 767].
- (iii)Anil Sood v. Presiding Officer [2001 (10) SCC 534].
- (iv)Sangam Tape Company v. Hans Raj [2005 (9) SCC 331].
- (v)Management Khadi & Village Industries Board v. P. Subramaniam [W.A.No.913 of 2008 : Order dated 27.08.2008].
- (vi)Radhakrishna Mani Tripathi v. L.H. Patel & Another [2009 (2) SCC 81].
- (vii)Haryana Suraj Malting Ltd. v. Phool Chand [2012 (8) SCC 579].
- (viii)K.Manoharan v. Presiding & Another [W.P.(MD) No.1395 of 2011 : Order Dated 06.12.2013].

5.The learned counsel appearing for the second respondent would submit that in view of number of pronouncements as has been quoted above, even the issue as to whether the Labour Court would become *functus officio* after 30 days period from the date of publication of the award, has been referred to a Larger Bench for an authoritative pronouncement, and as on date the latest pronouncement would be that the Labour Court certainly would become *functus officio*. Therefore, in this case, since, admittedly the award was sent for publication on 03.12.2008 and the petitioner has filed the application to set aside the *ex parte* award with a delay of 243 days, the first respondent Labour Court has rightly rejected to entertain the application for the reason that it has become *functus officio* in view of that the award has been sent for publication on



03.12.2008. Therefore, the learned counsel appearing for the second respondent would submit that there is absolutely no reason to interfere with the impugned order.

6.The learned counsel appearing for the second respondent would also submit that even on merits the reason adduced by the petitioner for non-appearance on the particular date on which award was passed *ex parte* is totally unjustifiable. Therefore, the impugned order was passed not only based on the Labour Court becoming *functus officio*, but also on the ground that the reason adduced for the non-appearance on that day and the reason for non-filing objection, are not sufficient one. Therefore, both on merits as well as on the power of the Labour Court, the order passed by the first respondent is fully justifiable and within the meaning of the provisions of the Industrial Disputes Act and therefore, the same requires no interference by this Court.

7.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent and perused the materials available on record.

8.The only issue that has to be decided in this writ petition is as to whether the Labour Court has got power to entertain the application to condone the delay of 243 days and to pass orders to restore the *ex parte* order passed in the Industrial Dispute, when such an application to condone the delay of 243 days was admittedly filed beyond 30 days within the meaning of 17-B of the Industrial Disputes Act. Insofar as the said legal question is concerned, in the judgment of the Division Bench in **L.Amarnath v. The Presiding Officer, Labour Court, Trichy [W.P(MD)No.1046 of 2012, dated 01.12.2015]**, the said issue has been considered and ultimately the Division Bench of this Court held that, in view of the Judgment of the Hon'ble Supreme Court in **Radhakrishna Mani Tripathi v. L.H.Patel** reported in **(2009)2 Supreme Court Cases 81**, the Labour Court would have the power to set aside the award. The Division Bench of this Court also held that Rule 48(1) Tamil Nadu Industrial Disputes Rules, 1958 can also be pressed into service, which enables to file condone delay application to set aside the *ex parte* award.

9.Insofar as the said issue raised by the learned counsel appearing for the second respondent regarding the power of the Labour Court to entertain such an application, if it is filed beyond 30 days period after the Publication of the Award, this Court had an earlier occasion, to consider the said issue in W.P.No.12830 of 2010 in the matter of the **Management of M/s.Deena Paints Limited and others v. the Presiding Officer, Labour Court and another** in the judgment dated 12.01.2017, wherein after having considered the aforesaid judgments, which are now relied on by the learned counsel appearing for the second respondent, this Court has given the following reasons to hold that the Labour Court has power to entertain the delay even beyond 30 days period and the relevant



portion of the said judgment can be usefully referred to hereunder:

"20. After having analysed all these judgments including the one where the learned Judge had passed the order in the matter of K. Manoharan (cited supra), this Court is of the view that in this issue an authoritative pronouncement has not yet been made. Even the law laid down in the Grindlays Bank Ltd. (supra) has been distinguished in Radhakrishna Mani Tripathi case (supra) and after having noted the conflicting decisions in Sangham Tape Co. case (supra) and Radhakrishna Mani Tripathi case (supra), the Hon'ble Supreme Court in Haryana Suraj Malting Ltd. (supra) referred the issue to the Larger Bench of the Hon'ble Apex Court and the same has been reiterated by the Ram Shiroman Mishra case (supra). Therefore, as on date there are two different decisions of the Hon'ble Apex Court. One is that petition to set aside can be entertained beyond the period of 30 days of the award in spite of Section 17-A of the Act. The other view is that such a petition can never be entertained in view of Section 17-A of the Act, where the award becomes operational on the expiry of 30 days from the publication. Once the award becomes operational, the same cannot be tinkered as the Court becomes functus officio, is another view.

21. Here in this case, reasons have been adduced by the petitioners for non-appearing on the particular date when the petitioners were set ex-parte that, too on medical ground, thereafter on receipt of communication that award has been passed against the petitioners, immediately petition was filed to set aside the ex-parte award, of course with a delay of 127 days, for which separate petition was also filed. In this context Rule 48 of the Rules, in the opinion of this Court, can be employed to resolve this issue. Under Rule 48(1) ex-parte proceedings can be issued by the Labour Court. Under Rule 48(2) for sufficient cause, the Labour Court or Industrial Tribunal can set aside the ex-parte decision voluntarily or on an application made within 15 days of the ex-parte award. However, the proviso to sub-rule 2 to Rule 48 says if an application is made after the said period of 15 days and if the application satisfies the Board/Court/the Labour Court/Tribunal/ Arbitrator as the case may be that he had sufficient cause for not preferring the application within time, then the petition can be entertained beyond 15 days time. Once an application is entertainable beyond 15 days time under the proviso to Rule 48(2) and since there is no express provision that such an application entertained must be within 30 days from the date of



publication of the award in view of Section 17-A of the Act, this Court is of the considered view that such application can be entertained with a condone delay petition even beyond 30 days period, provided, if reason is given to the satisfaction of the Labour Court/Industrial Tribunal concerned.

22.If Section 17-A of the Act as well as Rule 48 of the Rules are read together by employing the theory of harmonious construction certainly the view expressed by the Hon'ble Apex Court in Radhakrishna Mani Tripathi case (supra) alone could be possible view. In this regard the decision in Radhakrishna Mani Tripathi case, where their Lordships compared Section 17-A of the Act as well as Section 26(2) of the Industrial Disputes (Bombay) Rules, can be taken as a precedent for cases of this nature as the present issue also squarely falls under that category. Therefore, in view of the said factors and the decisions of the Hon'ble Apex Court, this Court is of the considered view that the petition filed to condone the delay of 127 days in filing the petition to set aside exparte award could have been entertained by the first respondent Labour Court by invoking the aforesaid Rule 48(2) of the Rules and therefore, in that view of the matter, the present impugned order rejecting the said application on the ground that the first respondent Labour Court has become functus officio beyond 30 days from the date of publication as envisaged under Section 17-A of the Act, is erroneous and therefore, this Court has no hesitation to set aside the said impugned order passed by the first respondent and is remanding the matter for entertaining the said application and to decide the same on merits.

23.In the result, the writ petition is allowed. The impugned order made in I.P.No.364 of 2007 in I.D.No.187 of 2003 dated 11.04.2008 is set aside and the first respondent Labour Court is directed to take up the application made by the petitioner in I.P.No.364 of 2007 on file and to decide the same on merits and in accordance with law within a period of 3 months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed".

10.On the same line, the Division Bench also in the judgment, **L.Amarnath v. The Presiding Officer, Labour Court, Trichy [W.P(MD) No.1046 of 2012, dated 01.12.2015]**, has taken a similar view. In view of the said judgment which has been issued after considering the pronouncements made by the Hon'ble Apex Court, which are relied on by the learned counsel appearing for the second respondent, this Court is of the considered view that the application filed by the petitioner with the delay of 243 days could have been very well entertained by the first respondent Labour Court.



11.Insofar the reason assigned by the petitioner for non-appearance on that date is concerned, though the said reason appeared to be trivial in nature, normally, a person would attend the condolence in his relative's house. However, atleast some alternative arrangement could have been made. Without making any alternative arrangement simply restraining themselves from attending the Court and after an *ex parte* order is passed coming to the Court belatedly with a condone delay petition cannot be automatically accepted. However, in order to meet this kind of situation, as unless the condone delay petition is entertained and the delay is condoned, *ex parte* award passed by the Labour Court cannot be restored and, by this the worker, whose valuable right would be at stake, unless the Labour Court decide the industrial dispute raised before it on merits. The same ought to have been entertained. In this regard the findings given by the Division Bench judgment cited *supra* can very well be pressed into service, as the *ex parte* award passed by the Labour Court, cannot be an award passed within the meaning of Industrial Disputes Act. If any petition is filed to restore the *ex parte* award or to set aside the same, the same should have been entertained and the Labour Court must have explored the possibility of deciding the Industrial Dispute. Therefore, for all these reasons, even though reason for non-appearance, as adduced by the petitioner, cannot be taken as an effective reason for entertaining the application to condone the delay, the same could have been taken in terms of cost.

12.Therefore, in the circumstances, this Court is of the view that even on merits, the non-entertaining of the application or rejecting the same to condone the delay filed by the petitioner cannot be accepted and therefore, the impugned order is liable to be interfered with. Accordingly, the same is set aside.

13.In the result, the Writ Petition is allowed and the impugned order in I.A.No.416 of 2009 in I.D.No.75 of 1999 dated 31.08.2012 on the file of the 1st Respondent, is set aside and the first respondent Labour Court is directed to take up the application made by the petitioner on file and decide the same on merits and in accordance with law with a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

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Sub Assistant Registrar(CS)



To

1. The Presiding Officer,
Labour Court,
District Court Building,
Tiruchirappalli.

2. The Management,
Tamil Nadu State Transport Corporation
Madurai Division IV,
Dindigul.

+1 CC to Mr.T.RAVICHANDRAN, Advocate (SR-1276[F] dated 10/01/2020)

**ORDER MADE IN
W.P (MD) No.5513 of 2014
09.01.2020**

VB(28.01.2020) 7P 4C