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C.M.P.(MD)No.6948 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.M.P. (MD)No.6948 of 2018

in

W.A. (MD)SR.No.34789 of 2012

(Through Video Conferencing)

The Managing Director
Tamil Nadu State Transport Corporation
Madurai Division-I Ltd.
Bye-pass Road
Madurai - 625 010.

... Petitioner/Appellant

-Vs-

1.The Presiding Officer
Labour Court
Madurai.

2.K.Shanmugavel Gandhi

... Respondents/Respondents

Prayer in CMP(MD). 6948 of 2018 :

Civil Miscellaneous Petition filed to condone the delay 2088 of days in representing the W.A.S.R.No.34789 of 2012 Sought to be preferred to this court under Clause 15 of the Letter Patent against the order of this court dated 06.07.2012 and made in WP(MD) No. 3663 of 2011 presented under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records on the files of the 1st respondent pertaining to its proceedings in I.D.No.05/2004 dated 27.08.2008 and quash the same.

For petitioner/
Appellant : Mr.J.Senthilkumaraiah

R1 : Labour Court
R2 : No appearance

ORDER

[Order of the Court was made by **M.SATHYANARAYANAN, J.**]

The Management is the appellant. The second respondent/workman raised an Industrial Dispute in I.D.No.5 of 2004 on the file of the first respondent Court praying for setting aside the order of

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termination, continuity of service and other consequential benefits. In I.D.No.5 of 2004, the first respondent, vide award dated 27.08.2008. has partly allowed the claim and ordered his reinstatement with continuity of service and rejected the other prayer. The Management aggrieved by the said award filed W.P.(MD) No.3663 of 2011 and it was entertained. A Single Bench of this Court, vide final order dated 06.07.2012, has dismissed the said writ petition and challenging the legality of the same, the Writ Appeal came to be filed during August 2012.

2. The Registry having noted certain defects, had returned the papers and the said papers after compliance of the defects were re-presented with delay of 2088 days and to condone the same, the present petition is filed.

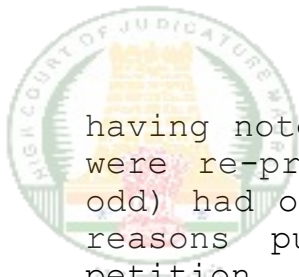
3. It is relevant to extract paragraph No.3 of the affidavit filed in support of this petition.

'3.I respectfully submit that I came to know that the above Writ Appeal was filed before this Hon'ble Court on 08.08.2012 and the same was returned by the Registry on 14.08.2012 for compliance of certain defects. After taking the returns, my Advocate's Clerk had misplaced the papers along with old "disposed of" bundles in my counsel office and the same was not represented within time. I contacted my counsel and enquired the stage of the Writ Appeal in the last week of February 2017. Then only I came to know that the above Writ Appeal was not re-presented in time. After thorough search in my counsel office, the Writ Appeal papers were traced and re-presented with a delay of 2088 days in re-presenting the papers. In the above circumstances, there has been a delay of 2088 days in re-presenting the writ appeal. It is neither wilful nor wanton, but it is due to the above said reason. If delay is not condoned, the Transport Corporation will be put to irreparable loss and hardship.'

4. The learned counsel appearing for the appellant/Management would submit that the delay had occurred due to the genuine reasons cited in paragraph No.3 and it cannot be construed as neither wilful nor wanton and prays for condonation of the same. It is also brought to the knowledge of this Court by the learned counsel appearing for the appellant/Management that the second respondent/workman is also no more.

5. This Court has carefully considered the rival submissions and also perused the materials placed before this Court.

6. It is to be noted, at this juncture, that the Writ Appeal itself came to be filed with a considerable delay and the Registry



having noted certain defects had returned the papers and the papers were re-presented and the delay of 2088 days (nearly 6 years and odd) had occurred and there are absolutely no tenable or acceptable reasons put forth in the affidavit filed in support of this petition.

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7. Though it is obligatory on the part of the petitioner/appellant to explain the same, in the considered opinion of this Court, in the absence of any tenable or acceptable reasons, such a huge delay cannot be condoned.

8. In the result, C.M.P.(MD)No.6948 of 2018 is dismissed. Consequently, W.A.(MD)SR.No.34789 of 2012 stands rejected.

9. The award of Labour Court have not been complied with. The petitioner/appellant/Management is directed to comply with the award and confer the benefits upon the legal representatives of the second respondent/deceased workman within a period of 10 weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Presiding Officer
Labour Court
Madurai.

C.M.P. (MD)No.6948 of 2018
in W.A. (MD)SR.No.34789 of 2012
16.09.2020

VB (24.09.2020) 3P 2C