



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.2171 of 2016

and

WMP (MD)No.1888 of 2016

C.Mohanraj

... Petitioner

vs.

1)The Presiding Officer,
Labour Court,
Trichirappalli.
2)The Management,
TNSTC, Kumbakonam Ltd.,
Trichirappalli Division,
Periamilaguparai,
Trichy-1.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in respect of the award pending in I.D.No.53/2010 dated 16.12.2014 issued by the 1st respondent, quash the same and also quash the consequential order passed by the 1st respondent in returning the application filed for restoration and direct the 1st respondent to restore the petition in I.D.No.53/2010 on file and to dispose of the same within the time limit that may be fixed by this Hon'ble Court.

For Petitioner: Mr.A.Rahul

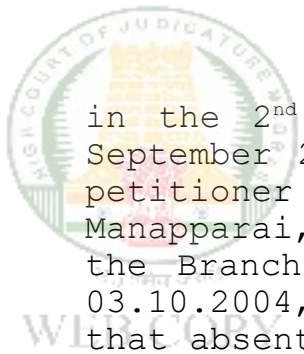
For R2 : Mr.D.Sivaraman

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records in respect of the award pending in I.D.No.53/2010 dated 16.12.2014 issued by the 1st respondent, quash the same and also quash the consequential order passed by the 1st respondent in returning the application filed for restoration and direct the 1st respondent to restore the petition in I.D.No.53/2010 on file and to dispose of the same within the time limit that may be fixed by this Hon'ble Court.

2.The petitioner would submit that he was appointed as a driver

<https://hcservices.ecourts.gov.in/hcservices/>



in the 2nd respondent corporation. He became ill during August-September 2004 and could not report for duty from 02.08.2004. The petitioner submitted his leave application to the Branch Manager, Manapparai, on 01.08.2004 and left the office with the permission of the Branch Manager, and was under treatment till 02.10.2004. On 03.10.2004, when the petitioner attended the office, he came to know that absent mark was entered for him in the attendance register from 02.08.2004 and he was denied to rejoin duty, against which, he raised an industrial dispute in I.D.No.53/2010 which was dismissed for non prosecution on 16.12.2014. On 03.03.2015, the petitioner filed a petition under rule 48(2) of the Tamil Nadu Industrial Disputes Rules read with Section 11 of the Industrial Disputes Act seeking to condone the delay of 86 days in filing the application to restore the industrial dispute which was dismissed for non prosecution. On 30.06.2015, the petitioner attained the age of superannuation. The Labour Court returned the above condone delay petition as to its maintainability and it was re-presented stating that the Labour Court does not loose its jurisdiction after the publication of the award in view of the decision of the High Court and the Supreme Court. Since the above petition was not taken up on file, the petitioner has filed this writ petition.

3.Learned counsel for the petitioner would submit that the issue as to whether the Labour Court has become functus officio after a period of 30 days after the publication of the award, has been considered in various decisions and it has been held that the Labour Court has got powers to entertain the application to set aside the award, filed even beyond 30 days. Thus, he would pray to set aside the order of return.

4.A detailed counter affidavit has been filed by the 2nd respondent. On the issue of maintainability, learned counsel for the 2nd respondent would state that after the expiry 30 days from the date of publication of the award under Section 17-A of the Industrial Disputes Act, the Labour Court has become functus officio and therefore, it has rightly returned the condone delay petition to condone the delay in filing the restoration of I.D. Thus, he would pray that the interference of this Court is not necessary.

5.Heard the learned counsel for the petitioner and the 2nd respondent.

6.The issue raised in this writ petition as to whether the Labour Court has become functus officio after a period of 30 days from the publication of the award, is no longer res integra in view of the decision 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 considering various judgments, 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



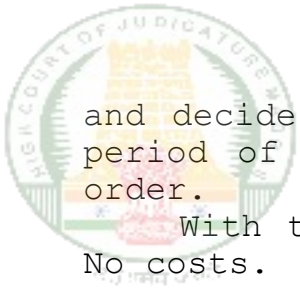
Act, this Court is of the considered view that such application can be entertained with a condone delay petition even beyond 30 days period, provided, if reason is given to the satisfaction of the Labour Court/ Industrial Tribunal concerned.

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".

7.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.

8.In my considered opinion, the above judgment is squarely applicable to the present facts and circumstances of the case and accordingly, the application filed by the petitioner with the delay of 86 days could have been very well entertained by the 1st respondent Labour Court. Therefore, the return order passed by the 1st respondent/Labour Court in the unnumbered I.A filed for restoration, is set aside. The 1st 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 within a period of two months from the date of receipt of a copy of this order.

With the above direction, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (AD I)

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Sub Assistant Registrar(CS)

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To

1)The Presiding Officer,
Labour Court,
Trichirappalli.

2)The Management,
TNSTC, Kumbakonam Ltd.,
Trichirappalli Division,
Periamilaguparai,
Trichy-1.

+1CC to Mr.A.Rahul,Advocate in CA SR.11716/2020

+1CC to Mr.D.Sivaraman, Advocate in CA SR/11379/2020

ORDER MADE IN

W.P(MD)No.2171 of 2016

DATED : 12.03.2020

SM/ (08.05.2020) 5P 5C