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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

CORAM

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

W.P. No. 10758 of 2012
and
M.P. No. 1 of 2012

The Management,
M/s. Singer India Ltd.,
New Delhi - 44.

... Petitioner

-VS-

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. V.A.Sivashankaran

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, praying to call for the records pursuant to the order in I.A. No. 642 of 2011 in I.D. No. 7 of 2006 on the file of the Labour Court, Coimbatore and quash the same.

For Petitioner : Mr. S.Saravanan

For Respondents : R1 - Court
Mr. A.Deivasigamani
for Mr. G.B. Saravana Bhavan
(for R2)

ORDER
(through video conference)

Heard Mr. S.Saravanan, Learned Counsel for the Petitioner and Mr. A. Deivasigamani, Learned Counsel for the Second Respondent and perused the materials placed on record, apart



from the pleadings of the parties.

2. The Second Respondent, who claims to have been orally terminated from service by the Petitioner, raised an industrial dispute in I.D. No. 7 of 2006 before the Labour Court, Coimbatore (hereinafter referred to as 'Labour Court' for short) invoking Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter after referred to as 'ID Act' for short) in which an exparte award dated 17.03.2008 came to be passed. After the Second Respondent filed a claim petition in C.P. No. 46 of 2009 before the Labour Court under Section 33-C(2) of the ID Act for computation of monetary benefits that has fallen due in terms of the aforesaid award in the industrial dispute, the Petitioner filed an application under Rule 48(2) of the Tamil Nadu Industrial Disputes Rules, 1958, for setting aside the exparte award dated 17.03.2008 in I.D. No. 7 of 2006 before the Labour Court along with an application in I.A. No. 642 of 2011 to condone the delay of 1278 days in filing the same. The Labour Court by an order dated 15.02.2012 in I.A. No. 642 of 2011 arrived at a conclusion that the Petitioner had not placed any cause for condoning the delay even for a single day and dismissed that application, which is assailed in this Writ Petition.

3. Learned Counsel for the Petitioner states that prior to the Second Respondent having approached the Labour Court in I.D. No. 7 of 2006, he had earlier filed an appeal in TNSE No. 2 of 2003 before the Deputy Commissioner of Labour, Coimbatore under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1948, pleading that he had been wrongfully deprived of employment by the Petitioner, but the same had been refused to be entertained on noticing that the Second Respondent had been only transferred by the Petitioner from its Branch Office at Pollachi to its Regional Office at Chennai by an order dated 21.04.2003 which cannot be construed as any termination of service. It is highlighted that in suppression of such material fact which has bearing on the question of permissibility to re-agitate the same matter before another forum, the Second Respondent has obtained the exparte award in the industrial dispute in I.D. No. 7 of 2006 from the Labour Court. It is further contended that the Company of the Petitioner had become a sick industrial concern and proceedings for its re-construction were where underway during the relevant point of



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time on account of which it was not in a position to properly contest the proceedings in the industrial dispute raised by the Second Respondent before the Labour Court and steps had been taken to set aside the exparte award passed therein after receipt of notice in C.P. No. 46 of 2009 from the Labour Court. Learned Counsel for the Second Respondent justifies the impugned order by emphasizing that there has not been any acceptable explanation from the Petitioner for condoning the inordinate delay in filing the application to set aside the exparte award.

4. Having regard to the rival submissions, when it was pointed out that it was incumbent upon the Second Respondent to have truthfully placed the proceedings of the Deputy Commissioner of Labour under the Tamil Nadu Shops and Establishments Act, 1947 in TNSE No. 2 of 2003 before the Labour Court while recording evidence in I.D. No. 7 of 2006, which does not appear to have been carried out, even though the Petitioner had remained exparte, Learned Counsel for the Second Respondent fairly accepted that the exparte award dated 17.03.2008 in I.D. No. 7 of 2006 passed by the Labour Court may be set aside and the matter remitted for fresh determination by compensating the Second Respondent with adequate costs, which has been fixed at Rs. 50,000/-. In furtherance thereof, Learned Counsel for the Petitioner has handed over Demand Draft bearing No. 262130 dated 18.10.2021 drawn on Indian Bank, Madras High Court Branch, Chennai for Rs. 50,000/- in favour of the Second Respondent and Learned Counsel for the Second Respondent has acknowledged its receipt by filing memo dated 08.10.2021 to that effect, which is placed on record.

5. In view of such concordance reached between the parties to shorten litigation and avert further protraction of the proceedings indefinitely, this Court in the exercise of plenary powers under Article 226 of the Constitution coupled with superintending jurisdiction under Article 227 of the Constitution, sets aside the impugned order dated 15.02.2012 in I.A. No. 642 of 2011 as well as the exparte award dated 17.03.2008 in I.D. No. 7 of 2006 passed by the Labour Court. The industrial dispute in I.D. No. 7 of 2006 shall stand restored to file and shall be listed for next hearing on 29.11.2021 before the Labour Court. The Petitioner shall file its Counter in I.D. No. 7 of 2006, if not already done earlier, on that date. The parties or their respective Counsel shall attend the hearing on



the said date as well as on the subsequent dates to which it is adjourned and shall extend their co-operation for expeditious adjudication of the industrial dispute. After affording full opportunity of hearing to the parties concerned following the prescribed procedure in consonance with the principles of natural justice, the Labour Court shall deal with each of the contentions raised by the parties and shall pass reasoned orders on merits and in accordance with law and communicate the decision taken to the concerned parties under written acknowledgment. It shall be ensured that there is atleast one effective hearing every week showing progress of the case and monthly reports in that regard shall be sent to the Registrar (Judicial) of this Court till the matter is finally disposed. Though obvious, it is made clear that no view has been expressed by this Court on the merits of the controversy involved in the industrial dispute.

In the upshot, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vjt/skr

To

1. The Presiding Officer,
Labour Court,
Coimbatore.

Copy to

1. The Managing Director,
M/s. Singer India Ltd.,
New Delhi - 44.



2. V.A. Sivashankaran,
S/o. Chellappan,
No. 8/100, Gandhiji Road,
Krishna Nagar,
Podanur,
Coimbatore - 22.

3. The Registrar (Judicial)
High Court, Madras.

W.P. No. 10758 of 2012

GPL(CO)
SB(09/11/2021)