



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM

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

W.P. Nos. 13444 and 15364 of 2013

1. The Management,
Hindutech Overseas Limited
Rep by its Director Mr. Ashwin Shashi,
'Sunnyside' New No.6, Old NO.49
Kumarasamy Nagar,
Villivakkam,
Chennai - 600 049. ...Petitioner in both W.P.s

-vs-

1. T.Kethu
2. The Labour Court,
Madras,
Rep by its Registrar,
Additional City Civil Court Building,
High Court Campus,
Chennai - 600 104. ...Respondents in both W.P.s

Prayer in W.P. No. 13444 of 2013:- Writ Petition filed under Article 226 of the Constitution of India, 1950 to issue a Writ of Certiorarified mandamus calling for the records of the 2nd respondent in the impugned order in I.A. No. 136 of 2012 in I.D.No. 47 of 2007 dated 05.02.2013 and quash the same and consequently direct the 2nd respondent to condone the delay of 55 days in filing the Petition to set aside the ex-parte Award dated 20.06.2012.

Prayer in W.P. No. 15364 of 2013:- Writ Petition filed under Article 226 of the Constitution of India, 1950 to issue a Writ of Certiorari calling for the records of the 2nd respondent in the Impugned Exparte Award dated 20.06.2012 in I.D.No.47 of 2007 and quash the same.

For Petitioner : Mr. K.M.Aasim Sheshzad
(in both W.P.s)

For Respondents: Mr. S.Sabarish
(for R1 in both W.P.s)

R2 - Court (in both W.P.s)



C O M M O N O R D E R
(through video conference)

Heard Mr. K.M.Aasim Sheshzad, Learned Counsel for the Petitioner and Mr. S.Sabarish, Learned Counsel for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent, who claims to have worked as leather cutter in the establishment of the Petitioner, raised an industrial dispute in I.D. No. 47 of 2007 before the I Additional Labour Court, Chennai (hereinafter referred to as 'the Labour Court' for short) invoking Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D. Act' for short) claiming that he had been denied employment from 17.01.2016 onwards and had sought for his reinstatement in service with continuity of service and backwages and all other attendant and consequential benefits. After receipt of notice in that industrial dispute, the Petitioner had entered appearance through its Advocate and had filed a Counter dated 28.12.2006 denying any relationship of employer and employee between the Petitioner and the First Respondent and projected that the services of the First Respondent, which had been occasionally hired, could not be treated as having created any right of employment in the establishment of the Petitioner. After the filing of proof affidavit by the First Respondent, which was treated as his examination-in-chief by the Labour Court, he was not cross-examined by the Learned Counsel for the Petitioner. As a consequence thereof, the Petitioner was called absent and the award dated 20.06.2012 in I.D. No. 47 of 2007 was passed by the Labour Court granting the reliefs as claimed. The Petitioner, thereafter made an application to set aside the exparte award along with an application in I.A. No. 136 of 2012 to condone the delay of 55 days in filing the same, contending that the Advocate, who had earlier appeared for the Petitioner, did not intimate about the further proceedings in the industrial dispute, which lead to the passing of that exparte award. The Labour Court was not convinced with such explanation of the Petitioner blaming its Advocate and rejected the application to condone that delay, which is assailed in W.P. No. 13444 of 2013. The other Writ Petition in W.P. No. 15364 of 2013 is filed challenging the exparte award dated 20.06.2012 that has been passed in in I.D. No. 47 of 2007 by the Labour Court.

3. It requires to be straightaway noticed that the exparte award dated 20.06.2012 in I.D. No. 47 of 2007 passed by the Labour Court does not contain any reason whatsoever. The Labour Court has merely recorded that the witness was examined, exhibits were marked, records were perused and as the Petitioner had not adduced any contra evidence, the claim was proved and



the First Respondent was entitled to the relief sought. It must, at once, be pointed out that the Division Bench of this Court in M/s. Meenakshisundaram Textiles -vs- M/s.Valliammal Textiles Ltd. [(2011) 3 CTC 168] after referring to the decisions of the Hon'ble Supreme Court of India in Swaran Lata Ghosh -vs- H.K.Banerjee [(1969) 1 SCC 709], State of Tamil Nadu -vs- S.Thangavel [(1997) 2 SCC 349], Balraj Taneja -vs- Sunil Madan [(1999) 8 SCC 396], Lakshmi Ram Bhuyan -vs- Hari Prasad Bhuyan [(2003) 1 SCC 197], Ramesh Chand Ardawatiya -vs- Anil Panjwani [(2003) 7 SCC 350], and State of Punjab -vs- Bhag Singh [(2004) 1 SCC 547], has reiterated the settled legal position that even in the absence of the Defendant contesting in a suit, the Court is legally bound to give reasons for granting the claim of the Plaintiff and in the absence of such adjudication of the claim, the decree passed cannot be sustained in law. There is no discussion with reference to any of the documents produced or from the deposition of the witness in the award passed by the Labour Court as to how the Respondent was entitled to the relief sought as prayed for the mere asking and as such, the same cannot stand judicial scrutiny. At the same time, it cannot also be lost sight of the fact that the Petitioner has rather adopted a very casual and cavalier approach in contesting the proceedings before the Labour Court and the explanation for the delay in taking steps to set aside the exparte award is seeming desultory though it is for a short period of 55 days.

4. In that backdrop, it would subserve the interests of justice to impose the condition that the Petitioner shall pay a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) by way of Demand Draft towards costs to the First Respondent under written acknowledgment and report before the Labour Court by 30.11.2021 for setting aside that exparte award, failing which the impugned order shall stand automatically confirmed without any further reference to this Court. In the event of the Petitioner complying with the said condition within that stipulated time limit, the exparte award dated 20.06.2012 in I.D. No. 47 of 2007 passed by the Labour Court shall be treated as having been set aside, and the industrial dispute in I.D. No. 47 of 2007 shall be restored to its file and the order dated 05.02.2013 passed by the Labour Court rejecting the application in I.A. No. 136 of 2012 in I.D. No. 47 of 2007 shall stand effaced, and the matter shall be listed for hearing on 08.12.2021 before the Labour Court. If the Labour Court is not in a position to take up the matter on the said date, the date to which it is adjourned shall be informed in the prescribed manner. The First Respondent, who has been examined as P.W.1, shall appear on the said date for his cross-examination by the Petitioner to proceed. The parties and their respective Counsel shall attend the hearing on the said date as well as on the subsequent dates to which it is adjourned and extend their co-operation for the early disposal



of the matter. After affording full opportunity of hearing to all 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 and 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.

In the result, these Writ Petitions are ordered on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Maya/vjt

To

1. The Registrar,
The Labour Court,
Madras, Additional City Civil Court Building,
High Court Campus, Chennai - 600 104.

Copy to

1. The Director Mr. Ashwin Shashi,
The Management, Hindutech Overseas Limited
'Sunnyside' New No.6, Old NO.49
Kumarasamy Nagar, Villivakkam,
Chennai - 600 049.
2. T.Kethu,
No. 137, Thiruvalluvar Street,
Madhavaram, Chennai - 600 060.
3. The Registrar (Judicial),
Madras High Court, Chennai - 600 104.

+2cc to M/s.B.F.S.Legal, Advocate, S.R.No.57316 and 57317

W.P. Nos. 13444 and 15364 of 2013

SMI(CO)
RGA(17/11/2021)