



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.A.No.1133 of 2011

The Management of Murali Enterprises
rep. by its Proprietor Mr.Murali,
No.643, M.K.N.Road,
Guindy, Chennai-32. ... Appellant / Petitioner
-VS-

1. The Presiding Officer,
I Additional Labour Court,
Chennai.

2. P.Thangappan ... Respondents / Respondents

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the Order of the learned Single Judge made in W.P.No.31167/2003 dated 7.1.2009.

Prayer in WP.No.31167/2003: Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the records in IA.No.226/02 in ID No.414/95 dated 17.10.2003 on the file of the Ist Respondent.

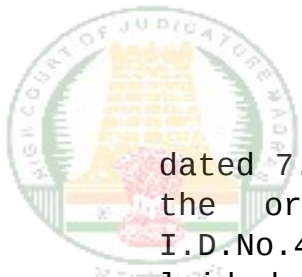
For Appellant : Mr.P.Sunil @ Sunil Prakash

For 2nd respondent : Mr.R.Lawrance

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA.J)

This Writ Appeal has been filed challenging the correctness of the impugned order passed in W.P.No.31167/2003



dated 7.1.2009 wherein the learned Single Judge, while confirming the order dated 17.10.2003 passed in I.A.No.226/2002 in I.D.No.414/1995 by the 1st respondent herein, applying the ratio laid down by the Hon'ble Apex Court in a case reported in 2004 AIR SCW 5452 in Sangham Tape Company v. Hans Raj and also relying on a decision of the Apex Court in Grindlays Bank Limited v. Central Government Industrial Tribunal and others reported in 1980 (Supp) SCC 420 holding that the Labour Court would become functus officio as no other petition was filed within 30 days, dismissed the Writ Petition. Against which, the present Writ Appeal has been filed.

2. While challenging the correctness of the order, learned Counsel for the appellant submitted that the order of the learned Single Judge dismissing the writ petition on the ground that the Labour Court has become functus officio is also incorrect in the light of the Full Bench judgment of the Apex Court in M/s.Haryana Suraj Malting Limited vs. Phool Chand reported in 2018(4) W.L.N. 36 wherein the Full Bench after referring to Grindlays Bank Limited case following Satnam Verma v. Union of India and J.K.Synthetics Limited v. Collector of Central Excise reported in (1996) 6 SCC 92 has finally come to the conclusion that when an application for setting aside the ex-parte award is made at the instance of the management, the Labour Court/Tribunal has to balance equities because the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace and the Labour Court is not functus officio, after the award has become enforceable as far as setting aside an ex-parte award is concerned.

3. In this regard, it is pertinent to extract the relevant portion here under:

'35. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award pending denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time



WEB COPY

for its non-appearance in the Labour Court/Tribunal when it was set ex-parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award has become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex-parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent.

36. We may also add that when an application for setting aside an ex-parte award is passed at the instance of the management, the Labour Court/Tribunal has to balance equities. The appeals are hence disposed of as follows: The awards are remitted to the Labour Court for consideration as to whether there was sufficient cause for non-appearance of the management. Since the litigation has been pending for a long time, we direct the appellants to pay an amount of Rs.1,00,000/- in each case to the workmen by way of provisional payment. However, we make it clear that the payment is subject to the final outcome of the awards and will be adjusted appropriately. We record our deep appreciation for the gracious assistance rendered by Mr.Shekhar Naphade.''

Following the aforesaid decision, in this case, since the learned Single Judge and also the learned Labour Court/1st respondent herein have wrongly decided the issue against the settled legal position, we are of the view that for the mistake on the part of the court, the litigant cannot be put to suffer.

4. At this stage, learned Counsel for the 2nd respondent submitted that when the termination of the service of the 2nd respondent was set aside by the I Additional Labour Court, Chennai, the appellant being the Management is liable to pay 17-b



wages and now that 17-b wages also has not been paid for a long time.

5. But the case of the appellant herein stands on a different footing. It is the claim of the appellant Management that the 2nd respondent has stopped coming to employment from November, 1990 onwards and his accounts were settled on 23.2.1991. After that, he was working in Tamil Nadu Press Tools Private Limited at Industrial Estate, Ekkattuthangal. When the appellant Management has stated that the 2nd respondent worker was not only working in Tamil Nadu Press Tools Private Limited but also working in MPTC and that he has also forged a document as though he was working under the appellant for which the appellant has also filed a false complaint that reached only the CSR stage, the matter needs to be examined by the I Additional Labour Court/the 1st respondent herein as to whether the 2nd respondent was indeed terminated from service or not.

6. Learned Counsel for the 2nd respondent further submitted that the appellant has not questioned the correctness of the award which argument does not carry any weightage. The reason being that when the I.A.No.226/2002 in I.D.No.414/1995 was dismissed by the 1st respondent herein against which W.P.No.31167/2003 was filed that was also dismissed against which W.A.No.1133/2011 was filed with delay, the delay application is allowed by this Court in the light of the decision of the Apex Court reported in (1981) 2 Supreme Court Cases 788 in Rafiq and another vs. Munshilal and another that for the fault on the part of the counsel, poor litigant should not be put to any prejudice. Therefore, this argument shall not carry any weightage either before this Court or before the Labour Court.

7. In view of the foregoing reasons, the order passed in W.P.No.31167/2003 dated 7.1.2009 by the learned Single Judge is set aside subject to the payment of Rs.15,000/- (Rupees Fifteen Thousand Only) payable by the appellant herein to the 2nd respondent worker, within two weeks from the date of receipt of a copy of this Order and the matter is remitted back to the I Additional Labour Court, Chennai, who shall take up the matter and dispose of the same on merits and in accordance with law, after giving opportunity of hearing to both sides, within a period of eight weeks thereafter. The parties are also directed to co-operate with the 1st respondent Labour Court.



WEB COPY

8. With the above observations and directions, the present Writ Appeal is allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsi

To

The Presiding Officer,
I Additional Labour Court,
Chennai.

+1cc to Mr.K.P.Shanthosh, Advocate, S.R.No.50597

W.A.No.1133/2011

MG(CO)
SB(10/11/2021)