IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NOS.2131 AND 2135 OF 2021
AND M.P.NO.2412 OF 2021

M/s.Sivam Apparels
Rep.by its Proprietor
Mr.Ajay Kumar Singh
No.35, Murugan Koil Street,
Vanasakthi Nagar, Extension
Kolathur, Chennai 600 099. ... Petitioner in both petitions

-vs-

Y.Priya ... Respondent in both petitions

Prayer in W.P.No.2131 of 2021:-

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the concerned records from the III Additional Labour Court, quash the exparte Award dated 18.07.2019 passed by the III Additional Labour Court, Chennai in I.D.No.96 of 2018 as illegal, arbitrary and contrary to law and consequently direct the III Additional Labour Court, Chennai to restore I.D.No.96 of 2018 on file and decide the dispute on its merits.

Prayer in W.P.No.2135 of 2021:-

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the concerned records from the III Additional Labour Court, quash the order dated 01.12.2020 in I.A.No.1 of 2020 in I.D.No.96 of 2018 passed by the III Additional Labour Court, Chennai as illegal, arbitrary and contrary to law and consequently condone the delay of 137 days in filing petition to set aside the exparte Award and direct the III Additional Labour Court, Chennai to restore I.D.No.96 of 2018 on its file and decide the dispute on merits.

For Petitioner : Ms.Kavya
For Mr.Balan Haridas

For Respondent : M/s.S.S.Jothivani for R1

COMMON ORDER

The Writ Petition in W.P.No.2131 of 2021 has been filed, challenging the Exparte Award dated 18.07.2019 passed by the III Additional Labour Court, Chennai in I.D.No.96 of 2018, by which, the Employee / Respondent herein was directed to be reinstated with continuity of service and all other attendant benefits and with full back wages. In W.P.No.2135 of 2021, the Petitioner / Management seeks to set aside the order dated 01.12.2020 passed by the III Additional Labour Court, Chennai, which declined to condone the delay of 137 days in filing the petition to set aside the Exparte Award dated 18.07.2019.

2. Learned counsel for the Petitioner / Management submitted that the Management could not file the petition against the Ex-parte award in time due to preoccupation, and that there was a delay of 137 days in filing the same. Though the Management wanted to contest the matter on merits, there occurred a delay due to other business engagements. It was further submitted that a meritorious case cannot be thrown out on account of a technical flaw. Since the delay is not an exorbitant one, it cannot be said that the Management has slept over the matter for years together and thereafter, knocked at the doors of the Court, when it was sought to be enforced.

3. Per contra, learned counsel for the Employee contended that the Management has not explained the cause for the delay, which itself is against the settled proposition of law and the Management, despite giving several opportunities to them, had not chosen to defend their case before the Labour Court. The Employee cannot be made to suffer for the fault committed by the Management and that his lase drawn pay was Rs.6,700/-p.m., which she is entitled from the date of Ex-parte award, in terms of Section 17(B) of the I.D.Act, 1947, as she is without employment ever since the date of divesting of her duties.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. It is not in dispute that there is a delay of 137 day in filing a petition to restore the Ex-parte award dated 18.07.2018 and the delay has not been explained properly, except stating there was preoccupation in business. At the same time, it should not be lost sight of the fact that no purpose would be served in keeping these Writ Petitions pending for years together, by

dragging on the proceedings consecutively. In that process, the Management / employer cannot be allowed to go scot-free and make the Employee suffer endlessly and unless an opportunity is given and the Employee subsists, she cannot defend her case, in terms of the judgment of this Court in the case of Management of Auro Food Ltd vs. Presiding Officer, Labour Court, reported in (2001) II LLJ 1721 Mad, the relevant portion of which, is extracted below:

> "13....In such case, since it is permissible for the petitioner-management to adduce evidence to justify the order of dismissal, it is equally permissible for the workman to defend himself and it is for the Labour Court to adjudicate into the proceedings and ultimately arrive at such appropriate conclusion on the allegations placed against the workman. Accordingly, the matter is remitted back to the first respondent Labour Court permitting the petitioner-management and the workman respondent to substantiate their respective case. But the mere remittance would not itself be an end to the grievance of the workman K. Sugumaran who had been dismissed and subjected to the agony of legal proceedings for the past 12 years, as rightly pointed out by Sri Prasad, the learned counsel for the second respondent. Therefore, the workman, K. Sugumaran should be given a fair and reasonable opportunity to defend himself in the adjudication pending before the Labour Court. It is needless to emphasise that unless the workman subsists he cannot defend himself. The meaning of the word subsists, as given in shorter Oxford English Dictionary, is to, remain alive as on food; to continue to exist and subsistence means supporting life, especially a minimum livelihood. Therefore, if the workman is to be given a fair and reasonable opportunity to defend himself, he has to remain alive on food, to which he requires the subsistence allowance to be paid by the petitioner-management, who had dragged the workman into a disciplinary action, but not on his own accord. Hence the payment of subsistence allowance alone could enable the workman to maintain himself and the members of his family and also to meet the expenses of litigation to which he is subjected to. If no amount is paid during the pendency of such disciplinary action it is to be held that the workman concerned has been denied a fair and reasonable opportunity to defend himself in the disciplinary proceedings initiated by the management either before the management themselves or before the Labour Court/ Tribunal as the case may be as held in Fakhirbhai

Fulabhai Solanki v. Presiding Officer and Anr. Therefore, the act of non-payment of subsistence allowance can be likened to slow poisoning of the employee, if not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death, as observed in Capt.M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. Therefore, while accepting the case of the petitioner-management that they are entitled to adduce relevant evidence to justify the order of dismissal before the Court and remitting the matter to the Labour Court to adjudicate the matter afresh and to give a fair and reasonable opportunity to the petitioner-management to justify the order of dismissal as well as the second respondent-union, by applying the ratio laid down in Solanki case (supra) and Capt. M. Paul Anthony case (supra), I am obliged to direct the petitioner-management to pay the subsistence allowance to the workman as per law from the date of suspension and to settle the arrears of the subsistence allowance payable to the workman within thirty days from the date of receipt of the copy of this order.

14. This writ petition is ordered accordingly. No costs."

6. In the light of the aforesaid judgment of this Court, which has been confirmed by the Division Bench on 22.09.2003, this Court is of the view that the delay has got to be condoned and the Ex-parte award is liable to be recalled on account of condonation of delay, by affording an opportunity to the respective parties to put forth their case before the Labour Court, but, of course, on certain terms.

7. In the result, these Writ Petitions are disposed of, on the following lines:

i) The delay is condoned and the Exparte award dated 18.07.2019 is hereby set aside. The matter is remanded back to the Labour Court, Chennai;

ii) There shall be a direction to the Management to pay a sum of Rs.6000/- per month to the Workman, as subsistence allowance to the Employee, till the Industrial Dispute is decided in one way or the other, which shall be from the date of the Ex-parte award;

iii) This Court cannot grant wages, since the Industrial Dispute is restored and at that stage, 17(B) may not be applicable, as it may give rise to one more round of litigation. However, during the pending of Writ Petition, the employee will be entitled to wages under Section 17(B) of the I.D.Act, 1947, if conditions therein are complied with.The Labour Court is directed to proceed with the Industrial Dispute and conclude the same within a period of six months from the date of receipt of a copy of this order, without adjourning the matter beyond seven working days at any point of time and bring the issue to an logical end;

iv) If the employee, for any reasons, protracts the proceedings, the monthly payment of Rs.6,000/- will be reduced to 50% beyond the period stipulated supra and if the reduction is questioned, the delay in the proceedings will be attributable to the employee and the monthly payment of Rs.6,000/- will be further reduced to 25%. Each and every adjournment shall be granted to the parties on filing a memo or an affidavit. The amount so received will be adjusted based on the outcome of the Industrial Dispute.

8. It is needless to mention that pendency of the Dispute is not a bar for the parties to workout for an amicable settlement. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dpq

To:

The III Additional Labour Court,
Chennai.

+2ccs to M/s.S.S.Jothivani, Advocate, S.R.No.34203,34204

W.P.Nos.2131 and 2135 of 2021

VBM(CO)
PM/12/11/2021