



COMMON ORDER

The second respondent herein was employed as Sanitary Worker in Thanjavur Municipality. Challenging her non-employment, she had preferred an Industrial Dispute before the Labour Court, Cuddalore, in I.D.No.114 of 1999, in which, the Management of Thanjavur Municipality, was set ex-parte and an Award came to be passed on 17.04.2001. Pursuant to the Award, the Claim Petition came to be filed before the Labour Court in Claim Petition No.25 of 2002, in which an amount of Rs.3,39,515/- was computed as the amount to be paid by the Management.

2. The Municipality has challenged the Award in W.P.No.37370 of 2004 and the Claim Petition in W.P.No.37368 of 2004. Pending these writ petitions, the employee had expired and her legal heirs namely, the respondents 3 to 5 herein have been impleaded. It is stated that through an interim order, this Court had directed the Management to deposit 50% of the back wages and by subsequent order dated 10.11.2009, the employee was permitted to withdraw 50% of the deposited amount.

3. In this background, both these writ petitions are taken up for final disposal today.

4. The learned counsel for the petitioner / Municipality submitted that the order of the Labour Court is a non-speaking order and, it has not considered any documentary evidence, while directing the Municipality to pay the monetary benefits and while ordering reinstatement.

5. Per contra, the learned counsel appearing for the respondents 3 to 5 submitted that though the petitioner was entitled to file an application to set aside the ex-parte order under Rule 34 (11) of the Tamil Nadu Industrial Disputes Rules, 1958 (herein after referred to as 'the Rules'), and also an application under Rule 48 (2), challenging the ex-parte Award, the Municipality has not exercised such options. The writ petitions came to be filed after the claim petition filed by the second respondent was ordered and that too belatedly, after two years. Pointing out that there was no bonafides on the part of the Municipality, the learned counsel seeks for dismissal of the present writ petitions.

6. It is no doubt true that whenever, the Labour Court considers the Industrial Dispute raised before it, after setting aside the respondent ex-parte, there is a duty cast on the Court to address the merits of the case, based on the materials available before it.

7. In the case of Tamil Nadu Housing Board vs. Presiding



Officer, II Additional Labour Court and another, reported in (1997) 1 LLJ 923, held as follows:

"7. Thus, from the aforesaid award, "it is clear that the Labour Court has not considered the evidence on record. Even though the appellant remained absent, nevertheless, there was evidence on record. There were the statements of the case pleaded by the petitioner and the respondent. The Labour Court was required to consider and give reasons for passing the award in favour of the 2nd respondent workman. As no such reason is given, not even the facts of the cases are stated, the award cannot at all be considered to be a speaking order, as such it cannot be sustained. The Presiding Officer is an Officer of the District Judge grade. He should not have decided the dispute in such a manner. There is no judicial application of mind of the Presiding Officer of the Labour Court. Such exercise of jurisdiction causes great and incalculable damage to the parties and also to the administration of justice. The Presiding Officer would do better, if he discontinues such a habit of disposal of cases."

By applying the ratio laid down in the aforesaid decision, it would be appropriate, in normal circumstances, to remit back the matter to the Labour Court for reappraisal. However, this Court has taken note of the fact that the third respondent had died pending these writ petitions and in case the matter is going to be remitted back to the Labour Court for reappraisal, there would be an application cast on the legal heirs to defend the application to set aside the ex parte order, which would not be efficacious insofar as the legal heirs are concerned.

8. By applying the ratio laid down in the aforesaid decision, it would be appropriate, in normal circumstances, to remit back the matter to the Labour Court for reappraisal. However, this Court has taken note of the fact that the second respondent had died pending these writ petitions and in case the matter is going to be remitted back to the Labour Court for reappraisal, there will be an obligation cast on the legal heirs to defend the application to set aside the ex-parte order, which would not be efficacious, insofar as the legal heirs are concerned.

9. In this background, the ground raised by the learned counsel for the respondents 3 to 5, gains prominence. As rightly pointed out by the learned counsel, after the petitioner herein was set ex-parte in the Industrial Dispute, there was a right available to them to file an application under Rule 34 (11),



which the Municipality had failed to exercise. Thereafter, the Award came to be passed on 17.04.2001 and even here, the Municipality had a right to file an application to set aside the ex-parte Award under Rule 48 (2) of the Rules. These rights were not duly exercised by the Municipality and in this background, the Award came to be passed and the second respondent had also filed a claim petition on 18.04.2002, which was one year later from the date of the Award. Till such time, the Municipality did not take any action to rectify the ex-parte Award. The Claim Petition came to be ordered on 22.01.2003. Even in the Claim Petition, the Municipality was set ex-parte. After more than one year, the Management herein had filed these writ petitions on 14.12.2004. Apparently, such filing of the writ petitions could have been owing to be final orders passed in the claim petition.

10. I do not find bonafides on the part of the petitioner / Municipality in the manner in which they had handled the dispute pertaining to the non-employment of the second respondent. Though the learned counsel for the petitioner / Municipality claims that the non-employment was backed on sufficient reasons, the very fact that the Municipality was sleeping over their rights throughout the proceedings commencing from the raising of the Industrial Disputes, till filing of these writ petitions, I do not find any justification in the present situation to extend any further lenience or opportunity to the Municipality to go before the Labour Court to substantiate their reasons for non-appearance in the Industrial Dispute, as well as in the Claim Petition and permit the legal heirs of the deceased employee to defend its case. In view of the lethargy shown by the municipality in handling the issues and in exercising the case, it cannot be termed as bonafides. As such, this Court is of the view that the matter need not be remanded back and the writ petition deserves to be dismissed, since it lacks bonafides.

11. In this background, it is stated that pursuant to the interim orders of this Court, the petitioner / Municipality had deposited a sum of Rs.1,69,000/- on the file of the Labour Court, Cuddalore, out of which the second respondent herein had withdrawn 50% of the deposited amount. As such, it would be appropriate to permit the respondents 3 to 5 to withdraw the balance of the amount lying in deposit.

12. In this connection, the respondents 3 to 5 are granted liberty to make an appropriate application, seeking for withdrawal of the entire amount due to the second respondent, lying in deposit before the Labour Court and on receipt of such an application, the Labour Court, Cuddalore, shall pass appropriate orders, permitting the respondents 3 to 5 to withdraw the entire amount lying in the deposit. Such an order for withdrawal, shall be passed at least within two days from



the date of receipt of such application.

13. It is stated that the second respondent / deceased employee had reached the age of superannuation before her death. It is needless to point out that in view of the Award of the Labour Court passed in I.D.No.114 of 1999 as well as the orders of this Court, the legal heirs of the deceased employee / second respondent, namely respondents 3 to 5 are also entitled for the entire monetary dues including retirement benefits, payable to the second respondent / deceased employee.

14. With the above directions, the writ petition stands closed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

Pns

To

The Presiding Officer,
Labour Court,
Cuddalore.

+1cc to Mr.V.Ajay Khose, Advocate, S.R.No.41246
+2cc to Mr.V.Raghupathi, Advocate, S.R.No.41257

W.P.Nos.37368 & 37370 of 2004

SPD(CO)
RGA(17/09/2021)