



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.30743 OF 2005

V.Manoharan

... Petitioner

Vs.

1. The Management of
Park Sheraton – Adyar Gate Hotel,
132, TTK Salai,
Madras – 18.
2. The Presiding Officer,
Principal Labour Court,
Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, after calling for the records relating to the order dated 17.06.2002 in I.D.No.357 of 1996 from the 2nd Respondent, quash the same and consequently direct the 2nd Respondent to decide the matter on merits, on remand.

For Petitioner : Mr.V.Ajoy Khose

For 1st Respondent : Mrs.D.Veda



O R D E R

Petitioner/employee has come forward with this Writ Petition challenging the order dated 17.06.2002 passed by the 2nd Respondent/Labour Court in I.D.No.357 of 1996 and for a consequential direction to the Labour Court to decide the matter on merits, on remand.

2. In the case on hand, the Petitioner/employee has filed a Claim Statement before the Labour Court after failure of conciliation and the Management has filed counter. The employee was examined in chief on 27.06.2001 and the case was posted thrice for cross-examination by the Management. It is the case of the Petitioner/employee that, on 23.07.2001, the counsel for the Management was not ready for cross-examination. Hence, the case was adjourned to 20.08.2001 finally. On 20.08.2001, though the employee as well as the counsel on either side were present, the counsel for the Management was not ready for cross-examination and the matter was adjourned to 19.09.2001, on which date, the 2nd Respondent-Presiding Officer was on camp. Again, when the case came up for cross-examination of W.W.1 on 17.06.2002, the employee was unable to come and hence, the case was dismissed for default on the same date.

3. Learned counsel for the Petitioner/employee submitted that, the employee's erstwhile counsel viz. Mr.Fenn Walter, who was appearing before the 2nd Respondent/Labour Court was hospitalized due to illness and hence, he could not attend the case and that, he died subsequently. Hence, the employee was not aware of the fate of the case. Also, as there was change of address of the employee, he could not receive a copy of the Award.

4. It is contended by the learned counsel for the Petitioner that, after publication of the Award under challenge in terms of Section 17 of the Industrial Disputes Act, 1947, the Labour Court has become functus officio and hence, the Petitioner has no other option, but to challenge the Award by way of filing the present Writ Petition.

5. Learned counsel appearing for the 1st Respondent/Management represented that, the name of the 1st



Respondent-Hotel has been changed from 'Park Sheraton' to 'Crown Plaza' and that, the Petitioner/employee is about 68 years old as on date. Hence, according to the learned counsel, at this distant point of time, remanding the matter to the Labour Court is not going to serve any purpose.

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

7. 'Dismissed for default' cannot be an Award at all. In a catena of decisions, this Court has held that, in case, a party is absent, it is the mandatory duty on the part of the Labour Court/Tribunal to call for records and proceed with the Industrial Dispute, as if, the other party is present.

8. Rule 34(10) of the Tamilnadu Industrial Disputes Rules, 1958, makes it clear that, when a party is absent, the Tribunal/Labour Court will have to proceed as if, the other party is present and render a finding on merits. In this case, the Petitioner/employee has tendered evidence and on the date of dismissal of the Industrial Dispute, the matter has been posted for cross-examination of W.W.1. That being the case, there are materials available before the Labour Court and the Labour Court could have called for records from the Conciliation Officer and the Management to state their case, and thereafter, it ought to have rendered a finding on merits. In such an event, the employee will have no right at all to file a Petition to set aside the Award, invoking Rule 48(2) of the Tamilnadu Industrial Disputes Rules, 1958, on the ground that, the Labour Court has become functus officio and that, the Writ Petition needs to be entertained, and the Award has to be interfered with.

9. As the 2nd Respondent/Labour Court has perfunctorily proceeded to pass the Award, this Court is of the view that, the same is not an Award in the eye of law and it needs to be interfered with. Hence, the Award dated 17.06.2002 passed in I.D.No.357 of 1996 is set aside and the matter is remitted to the 2nd Respondent/Labour Court to decide the case afresh, after affording an opportunity of hearing to the parties concerned.

10. Taking note of the fact that, the Industrial Dispute is of the year 1996 and 25 years have gone by from the date of the dispute, the Labour Court is expected to take up the



Industrial Dispute and proceed with the same without adjourning the matter beyond seven working days at any point of time and render a finding on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

11. In the meantime, it is open to the Petitioner/employee to file a Petition to amend the cause title and bring the new employer in the place of the 1st Respondent/Management herein.

12. It is made clear that, since the Petitioner/employee has reached the age of superannuation, in case, his contention is accepted, he may be entitled to benefits only upto the age of 58, and not beyond that.

In fine, the Writ Petition is allowed with the above directions. No costs.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

(aeb)

To

The Presiding Officer,
Principal Labour Court, Chennai.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.35137

W.P.No.30743 of 2005

GP(CO)
RLP(17/09/2021)