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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2021

CORAM

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

W.P. No. 23728 of 2012

and

M.P. No. 1 of 2012

and

M.P. No. 1 of 2013

M/s. Saravana Selvarathnam
rep. by its Proprietor
Mr. Saravana Arul
No.14, Ranganathan Street,
T.Nagar, Chennai - 600 017.

... Petitioner

-VS-

1. The Secretary to Government of Tamil Nadu,
Labour and Industries Department,
Fort St. George,
Chennai - 600 009.
2. The Presiding Officer,
II - Additional Labour Court,
Chennai.
3. T.Paul Raj

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Second Respondent, to receive the application for recall of warrant in I.A.SR.No. 3643 of 2012 in E.P. No. 19 of 2010 in C.P. No. 82 of 2009 pending on the file of the Second



Respondent and decide the application for recall of warrant on merits.

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For Petitioner	:	Mr.D.Abdullah
For First Respondent	:	No Appearance
For Second Respondent	:	Court
For Third Respondent	:	Mr.N.Kamaraj

O R D E R

Heard Mr. D.Abdullah, Learned Counsel for the Petitioner and Mr. N.Kamaraj, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent, who claims to have worked in the establishment of the Petitioner from the year 1989 onwards, has raised an industrial dispute in I.D. No. 234 of 2008 before the II 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 orally terminated from service with effect from 31.03.2006. According to the Petitioner, except a private notice received from the Counsel for the Third Respondent, no notice through Court had been received in that matter in which an exparte order dated 18.12.2008 came to be passed directing the Petitioner to reinstate the Third Respondent in service with backwages, continuity of service and all other attendant benefits. The Third Respondent thereafter filed a Claim Petition in C.P. No. 82 of 2009 before the Labour Court in terms of Section 33-C(2) of the I.D. Act seeking computation of monetary benefits arising out of the exparte award dated 18.12.2008 in I.D. No. 234 of 2008 passed by the Labour Court. It is the case of the Petitioner that even in that proceeding, except private notice received from the Counsel for the Third Respondent, no notice through Court had been served on the Petitioner. The Labour Court by order dated 16.11.2009 in C.P. No. 82 of 2009 directed



the Petitioner to pay a sum of Rs. 4,51,250/- to the Third Respondent. Subsequently, the Third Respondent has commenced execution proceedings in E.P. No. 19 of 2010 before the Labour Court for recovering that amount due from the Petitioner under the order dated 16.11.2009 in C.P. No. 82 of 2009 and on receipt of notice in that proceeding, the Petitioner has filed applications for setting aside the exparte award dated 31.12.2008 passed in I.D. No. 234 of 2008 and exparte order dated 16.11.2009 passed in C.P. No. 82 of 2009 before the Labour Court, apart from entering appearance in the execution proceedings. However, it appears that the applications to set aside those exparte orders were dismissed for default on failure to serve notice on the Third Respondent, and the Petitioner was also set exparte in E.P. No. 19 of 2010. Thereafter, the Labour Court by order dated 23.07.2012 in E.P. No. 19 of 2010 ordered the arrest and detention of the Petitioner in civil prison. At that stage, the Petitioner made an application in I.A. 3643 of 2012 in E.P. No. 19 of 2010 before the Labour Court to re-call the warrant of arrest, but as the same was not taken on file, the present Writ Petition has been filed seeking for a direction to the Labour Court to receive the same and decide the application for re-call of warrant on merits and pass further orders thereon.

3. Before proceeding further, it requires to be taken note of the fact that the exparte award dated 18.12.2008 in I.D. No. 234 of 2008 and exparte order dated 16.11.2009 in C.P. No. 82 of 2009 passed by the Labour Court do not contain any reason whatsoever. The Labour Court has merely recorded that witness was examined, exhibits were marked, the claim was proved and the Third 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 accepting the claim of the



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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 orders passed by the Labour Court as to how the Third Respondent was entitled to the relief sought as prayed for the mere asking and as such, the same cannot stand judicial scrutiny. This Court had called for the records of the Labour Court from which it is seen that though the Third Respondent had filed affidavit of service of the private notice served on the Petitioner, no attempt was made to serve notice through Court in I.D. No. 234 of 2008 and C.P. No. 82 of 2009. 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.

4. In this backdrop, Learned Counsel for the Third Respondent has agreed that the exparte award dated 18.12.2008 in I.D. No. 234 of 2008 may be set aside and the matter may be remitted for fresh disposal and he has made an endorsement to that effect, which is recorded. As directed, Learned Counsel for the Petitioner has handed over a Demand Draft for the sum of Rs. 25,000/- in favour of the Third Respondent towards costs and Learned Counsel for the Third Respondent has acknowledged its receipt.

5. Having regard to such concordance reached between the parties to shorten litigation and avert further protraction of the proceedings in the main dispute, this Court in the exercise of plenary powers under Article 226 of the Constitution coupled with superintending jurisdiction under Article 227 of the Constitution, sets aside the exparte award dated 18.12.2008 in I.D. No. 234 of 2008 passed by the Labour Court and restores I.D. No. 234 of 2008 to its file and as a consequence thereof, the exparte order dated 16.11.2009 in C.P. No. 82 of 2009 passed by the Labour Court is nullified and the orders passed in E.P. No. 19 of 2010 are re-called and the proceedings in C.P. No. 82 of 2009 and E.P. No. 19 of 2010 shall stand closed. I.D. No. 234 of 2008 shall be listed for the next hearing on 29.09.2021 before the Labour Court. The Petitioner shall peremptorily file his Counter in I.D. No. 234 of 2008 on that date. The parties or 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 upshot, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

dm/skr

To

1. The Secretary to Government of Tamil Nadu,
Labour and Industries Department,
Fort St. George,
Chennai - 600 009.
2. The Presiding Officer,
II - Additional Labour Court,
Chennai.

Copy to

1. The Registrar (Judicial)
Madras High Court,
Chennai - 600 104.



2. The Record Keeper,
E.R. Section,
High Court, Madras - 104.

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PA(CO)
RLP(07/09/2021)