



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI
W.P. (MD) Nos.14873 and 14874 of 2011

and

M.P. (MD) Nos.1, 1 of 2011 and 1 of 2013

Manakavilai Primary Agricultural
Co-operative Bank Limited,
Y25, Manalikarai Post,
Kanyakumari District,
represented by its Special Officer,
S.Murugan.

... Petitioner in both W.Ps.

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.N.Paul Raj

... Respondents in both W.Ps.

Prayer in W.P. (MD)No.14873 of 2011: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to quash the impugned order dated 12.07.2005 passed by the first respondent in I.D.No.52 of 2000 and direct the first respondent to re-adjudicate the industrial dispute petition vide I.D.No.52 of 2000 afresh.

Prayer in W.P. (MD)No.14874 of 2011: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to quash the impugned order dated 19.08.2011 passed by the first respondent in I.A.No.253 of 2008 in I.D.No.52 of 2000.

For Petitioner : Mr.P.Mahendran
For R2 : Mr.Suresh
for M/s. L.Krishnamoorthy

COMMON ORDER

Since the issue involved in these writ petitions is one and the same, these writ petitions are taken up together and disposed of by way of common order.

2. These writ petitions have been filed challenging the impugned orders passed by the first respondent in I.D.No.52 of 2000, dated 12.07.2005 and in I.A.No.253 of 2008, dated 19.08.2011.



3. The case of the petitioner Management is that the second respondent was working as Clerk and also acting as in-charge Cashier in the petitioner Co-operative Bank Limited. During the service of the second respondent, it was found that he along with the then Secretary, Jewel Appraiser and Clerk, colluded and indulged in various misdeeds viz., fraud, misappropriation and breach of trust. For the said lapses, the petitioner Management issued a charge memo against the petitioner and conducted a domestic enquiry, after affording opportunity to the second respondent, dismissed the second respondent from service, on 22.09.1998. Simultaneously, surcharge proceedings were initiated against the second respondent. Further, criminal proceedings were also initiated against the second respondent and the criminal cases are pending against him before the learned Judicial Magistrate No.II, Tirunelveli. Aggrieved by the said order of dismissal dated 22.09.1998, the second respondent raised an industrial dispute in I.D.No.52 of 2000 before the Labour Court, Tirunelveli. The Labour Court passed an ex-parte award on 12.07.2005. Taking advantage of the ex-parte order, the second respondent filed C.P. No.36 of 2010 before the first respondent, claiming a sum of Rs.25,73,300/-. Thereafter, in order to safeguard the interest of the Co-operative Bank, the petitioner filed a restoration petition before the Labour Court, Tirunelveli with a petition to condone the delay of 972 days. The said Interlocutory Application was numbered as I.A.No.253 of 2008 in I.D.No.52 of 2000 and the Labour Court dismissed the condone delay petition in I.A.No.253 of 2008, on the ground that the delay of 972 days is not condonable and the Labour Court has no power to entertain the petition. Challenging the same, the present writ petitions have been filed.

4. Learned counsel appearing for the petitioner submitted that the finding recorded by the Labour Court that it does not have power to recall the order, which has been published, is wholly unsustainable, on the ground that an order passed without adherence to the principles of natural justice is an order in nullity and is non est in law. An exparte order was passed against the petitioner and on coming to know, the petitioner has filed the petition to recall the said order with a petition to condone the delay. The matter has not been appreciated in proper perspective by the Labour Court and, therefore, the said order deserves to be set aside.

5. On the above contentions, this Court heard the learned counsel appearing for the 2nd respondent, who vehemently submitted that the petitioner is bound to explain each and every day's delay and without there being proper explanation for the delay, the Labour Court has rightly dismissed the petition and, therefore, no interference is called for with the order passed by the Court below.

6. This Court paid its consideration to the submissions of the learned counsel on either side and also perused the



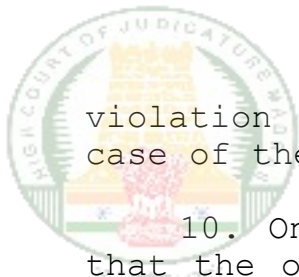
materials available on record as also the order passed by the Labour Court.

7. The Labour Court has dismissed I.A.No.253 of 2008, on the ground that once the award is published in the Government Gazette, the Labour Court has no power to recall the order.

8. It is not in dispute that the Labour Court has passed an order, *exparte* against the petitioner. It is therefore evident that the petitioner was not heard when the order was passed. It is to be pointed out that it is the well settled position of law through various decisions of the Hon'ble Apex Court that no finality attaches itself to an *ex-parte* award and if any application is filed to set aside the *exparte* award, the Labour Court is well within its powers to consider the application on its own merits and pass appropriate and suitable orders. It has also been further held that merely because an award has become enforceable, it 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. It has been the consistent view of the courts that an award passed without an opportunity of hearing could be challenged on the ground of nullity, when sufficient cause for non-appearance has been shown and such an award had no binding force. Where a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court when the set *ex-parte* order was passed, the Labour Court is bound to consider such an application, and the application cannot be rejected on the ground that it was filed after the award had become enforceable.

9. In the case on hand, true it is that the petitioner was set *exparte* and an award came to be passed against which an execution petition was filed, which led to the filing of the petition to set aside the *exparte* order. There is no quarrel on this aspect. Even the Labour Court has accepted the same while dealing with the petition for condonation of delay and the petition has been dismissed on the ground that once the award becomes enforceable, the Labour Court has no jurisdiction to recall its order. The said finding arrived at by the Labour Court, on the touchstone of the legal principles enunciated by the courts, as noticed above, renders the order passed by the Labour Court wholly unsustainable. It is not the finding of the Labour Court that the delay petition cannot be permitted on the ground that the delay has not been properly explained. Even further, it is to be pointed out that it is well within the domain of the courts to condone the delay in appropriate cases in order to render substantial justice. In the above backdrop, it is seen that the petition has been dismissed on the ground that the Labour Court has no power to recall the order passed, once the same is enforced. Such a finding recorded by the Labour court cannot be accepted for the reasons aforesaid. As pointed out above, the Labour Court is clothed with power to recall

<https://hccasescourts.gov.in/hccases> it is shown that the said order has been passed in



violation of principles of natural justice, which is the specific case of the petitioner herein.

10. On the above ground, this Court is of the considered view that the order passed by the Labour Court and the reasons assigned in the said order are wholly unsustainable and the same deserves to be interfered with.

11. Accordingly, the orders passed by the Labour Court in I.A. No.253/08 in I.D. No.52/2000 is hereby set aside and the Labour Court, Tirunelveli is directed to restore I.D.No.52 of 2000, on its file and pass appropriate orders on merits and in accordance with law, after affording opportunity of hearing to the petitioner as well as to the second respondent/workman, within a period of six months from the date of receipt of a copy of this order.

12. The writ petitions are allowed with the aforesaid observations and directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv/GLN

To

The Presiding Officer,
Labour Court, Tirunelveli.

+2 CC to Mr.P.MAHENDRAN, Advocate SR.No. 8531 & 8532

W.P. (MD)Nos.14873 and 14874 of 2011

03.03.2021

SRK(CO)

TR(18.06.2021) 4P 4C