



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WEB COPY

W.P.(MD)Nos.7616, 7617 of 2011 and 8770 of 2012

and

M.P. (MD)Nos.1 and 1 of 2011 and 1 of 2012

W.P. (MD)No.7616 of 2011:

The Management,
Nagalapuram Primary Agricultural
Co-operative Bank Ltd.,
Nagalapuram,
Eenjar(P.O), Virudhunagar Distrit.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
District Court Complex, Madurai.

2.K.Muthaiah

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the first respondent relating to I.A.No.136 of 2008, in C.P.No.119/2005; quash the order dated 17.06.2010, passed in I.A.No.136 of 2008, in C.P.No.119 of 2005; direct the first respondent to entertain the interlocutory application filed by the petitioner to set aside ex-parte order passed in C.P.NO.119 of 2005, dated 29.02.2008, into file and dispose of on merits of the matter.

W.P. (MD)No.7617 of 2011:

The Management,
Nagalapuram Primary Agricultural
Co-operative Bank Ltd.,
Nagalapuram,
Eenjar(P.O), Virudhunagar Distrit.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
District Court Complex,
Madurai.

2.K.Muthaiah

... Respondents



Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the first respondent relating to I.A.No.135 of 2008, in I.D.No.76 of 2000; quash the impugned order dated 17.06.2010, passed in I.A.No.135 of 2008, in I.D.No.76 of 2000; direct the first respondent to entertain the interlocutory application filed by the petitioner to set aside the ex-parte award passed in I.D.No.76 of 2000, dated 01.04.2005, in to file and dispose the same on merits of the matter.

W.P. (MD)No.8770 of 2012:

The Management,
Nagalapuram Primary Agricultural
Co-operative Bank Ltd.,
Nagalapuram,
Eenjar(P.O), Virudhunagar Distrit.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
District Court Complex,
Madurai.

2.K.Muthaiah

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the first respondent relating to I.D.No.76 of 2000; quash the impugned ex-parte award dated 01.04.2005; direct the first respondent to entertain I.D.No.76 of 2000, into file and dispose the same on merits of the matter.

For Petitioner
in all petitions : Mr.S.Seenivasagam

For Respondents
in all petitions : Mr.T.Ravichandran
for R.2

COMMON ORDER

W.P.(MD)No.7616 of 2017 is filed seeking for issuance of writ of Certiorarified Mandamus to call for the records of the first respondent relating to I.A.No.136 of 2008, in C.P.No.119/2005, dated 17.06.2010; quash the same and direct the first respondent to entertain the interlocutory application filed by the petitioner to set aside ex-parte order passed in C.P.NO.119 of 2005, dated 29.02.2008 and dispose of the same on merits.



2. W.P.(MD)No.7617 of 2017 is filed seeking for issuance of writ of Certiorarified Mandamus to call for the records of the first respondent relating to I.A.No.135 of 2008, in I.D.No.76 of 2000, dated 17.06.2010 and quash the same and direct the first respondent to entertain the interlocutory application filed by the petitioner to set aside the ex-parte award passed in I.D.No.76 of 2000, dated 01.04.2005 and dispose the same on merits.

3. W.P.(MD) No.8770 of 2012 is filed seeking for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent relating to I.D.No.76 of 2000; quash the impugned ex-parte award dated 01.04.2005; direct the first respondent to entertain I.D.No.76 of 2000 and dispose the same on merits of the matter.

4. The case of the petitioner is that the second respondent was working as a Secretary in the petitioner's Bank and he committed serious lapses and irregularities and thereby two detailed charge memos were issued on 08.01.1999 and 10.03.1999 and thereafter, the second respondent submitted detailed explanations, however, the said explanations were not found satisfactory. Therefore, the petitioner Management decided to conduct a domestic enquiry and accordingly, domestic enquiry was conducted and the Enquiry Officer has drawn a proven minute and based on that, the petitioner Management passed an order of dismissal from service of the second respondent workman.

5. Challenging the order of dismissal, the second respondent raised a dispute under Section 2-A(2) of the Industrial Disputes Act, before the first respondent and the first respondent has taken the same into file as I.D.No.76 of 2000. However, there was no representation on behalf of the petitioner Management and thereby, the Labour Court granted an ex-parte award in favour of the second respondent in I.D.No.76 of 2000. Challenging the same, the writ petition in W.P.(MD)No.8770 of 2012 is filed.

6. After the ex-parte award, the second respondent filed a claim petition in C.P.No.119 of 2005 and the said claim petition was also allowed in favour of the second respondent on 29.02.2008. Challenging the order of ex-parte, the petitioner Management filed a petition to condone the delay in filing application in I.A.No.136 of 2008 in C.P.No.119 of 2005. However, the said application was dismissed. Challenging the said order, the petitioner Management filed a writ petition in W.P.(MD)No.7616 of 2011.

7. As against the ex-parte award, the petitioner Management filed a petition to condone the delay in filing an application in



I.A.No.135 of 2008 to set aside the ex-parte award passed in I.D.No.76 of 2000. However, the said application was dismissed. Challenging the same, the petitioner Management filed a writ petition in W.P.(MD)No.7617 of 2011.

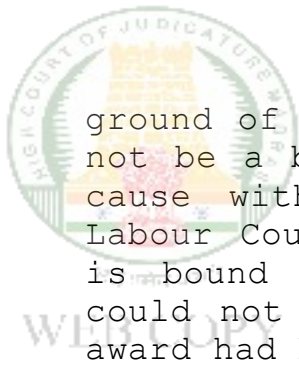
8. Learned Counsel appearing for the petitioner Management would submit that the original award passed in I.D.No.76 of 2000 and the consequential order passed in C.P.No.119 of 2005 were passed by the Labour Court, without hearing the petitioner and without affording an opportunity of hearing to the petitioner and hence, this Court may give an opportunity to the petitioner to raise every issue before the Labour Court and this Court may also fix outer time limit for disposal of I.D.No.76 of 2000, after affording an opportunity of hearing to the petitioner as well as the second respondent workman.

9. Learned Counsel appearing for the second respondent workman would submit that the petitions to condone the delay in filing an application to set aside the ex-parte award passed in I.D.No.76 of 2000 and to set aside the ex-parte order passed in C.P.No.119 of 2005 were dismissed by the Labour Court, based on the merits and further, the reasons for condoning the delay in filing the petitions were not properly explained and after a lapse of 10 years from the date of award, this Court need not interfere with the same and hence, the learned Counsel would pray for dismissal of the writ petitions.

10. Heard the learned Counsel appearing for the petitioner Management and the learned Counsel appearing for the second respondent workman and perused the materials placed on record.

11. Admittedly, the Labour Court passed an ex-parte order in I.D.No.136 of 2008 and also in the claim petition in C.P.No.119 of 2005, without giving opportunity to the petitioner Management and the Labour Court also dismissed the petitions for condoning the delay in filing the petitions to set aside the ex-parte orders in the year 2010 itself. However, the said issue was pending before this Court for another ten years, without any progress.

12. The Honourable Supreme Court in various decisions held that there was no finality attached to an ex parte award and the Labour Court had the power to deal with the application before it, and set aside the ex-parte award and pass suitable orders. It is also observed that merely because an award has become enforceable, 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 further held that an award that has been passed without an opportunity of hearing when there was sufficient cause for non-appearance could be challenged on the



ground of nullity, and an award that is nullified cannot and must not be a binding award. Where a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court when the hearing was set ex-parte, the Labour Court is bound to consider such an application, and the application could not be rejected on the ground that it was filed after the award had become enforceable.

13. In the present case, there is a justifiable reason for not taken any steps in filing the petitions to set aside the ex-parte award. However, there are some lapses on the part of the petitioner Management. Hence, this Court is inclined to impose a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) payable by the petitioner Management to the second respondent workman as costs. Accordingly, the petitioner Management is directed to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the second respondent workman, by way of a Demand Draft within a period of four weeks from the date of receipt of a copy of this order.

14. For the reasons stated above, the orders passed by the Labour Court are hereby set aside and the Labour Court, Madurai is directed to restore I.D.No.76 of 2000, on its file, after a receipt of a copy of the payment receipt made by the petitioner Management and pass appropriate orders on the same, on merits and in accordance with law, after affording opportunity of hearing to the petitioner as well as to the second respondent workman. The said exercise shall be completed within a period of six months from date of receipt of a copy of the payment receipt made by the petitioner Management. Since I.D.No.76 of 2000 is directed to be restored on the file of the Labour Court, the consequential order passed by the Labour Court in C.P.No.119 of 2005, dated 29.02.2008 is hereby set aside.

15. With the above directions, all the Writ Petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

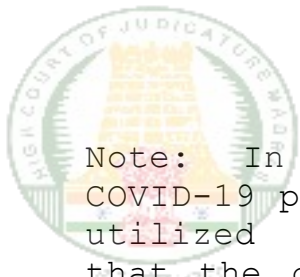
Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Presiding Officer,
Labour Court,
District Court Complex,
Madurai.

Copy to
The Registrar Judicial,
Madurai Bench of Madras High Court,
Madurai.

W.P(MD)Nos.7616, 7617 of 2011 and 8770 of 2012
01.02.2021

KM (16.02.2021) 6P 3C