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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	11.01.2022
PRONOUNCED ON	:	25.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE PARESH UPADHYAY
AND
THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.NO.36 OF 2022
AND C.M.P.NOS. 445, 447 & 451 OF 2022

Management Tamil Nadu Slum Clearance Board,
(Now renamed as Urban Habitat Development Board),
No.5, Kamarajar Salai,
Chennai - 600 005.

.. Appellant

vs

S.Sundararaman

..Respondent

Appeal preferred under Clause 15 of Letters Patent against the order dated 26.04.2019 made in W.M.P.No.35806 of 2016 in W.P.No.40241 of 2005.

Prayer in WMP.No.35806 of 2016:

Petition praying that in the circumstances stated therein and in the affidavit filed therewith on the file of this Court to Condone 301 days of Delay in filing the Petition for Restoration.

Prayer in WP.No.40241 of 2016:

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the 1st respondent dated 31.8.2004 and made in I.D.No.15/1991 and quash the order of the 1st respondent as illegal and without jurisdiction.



For Appellant : Mr.P.Kumaresan,
Additional Advocate General,
assisted by
Mr.R.Krishna Prasad

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For Respondent : Mrs.Kanimozhimathi

JUDGMENT

(Per: PARESH UPADHYAY, J.)

Challenge in this appeal is made by the Management to the order dated 26.04.2019 recorded on W.M.P.No.35806 of 2016 in W.P.No.40241 of 2005.

2. Learned advocate for the appellant has submitted that the impugned order passed by learned single Judge is erroneous and the same be interfered with. Serious grievance is made that though the workman was not entitled to any relief, Labour Court granted reinstatement with all consequential benefit, which should have been interfered with in writ petition, which is not done and therefore this appeal be entertained. It is noted that the learned advocate has extensively taken this Court through the pleadings on the writ petition and has also taken this Court through the reasons recorded by the Labour Court in the order impugned in the writ petition. It is submitted that the appeal be entertained.

3. On the other hand, learned advocate for the respondent/workman has made two fold submissions. Firstly that the award of the Labour Court is just and proper and further that though the workman has crossed the age of superannuation before more than a decade, even now, not only his legal dues are not paid to him, even pensionary benefits are also not finalised. It is submitted that there can not be said to be any error in dismissing the petition filed by the Management, where challenge was made to the award of the Labour Court and therefore no interference be made in this appeal. It is submitted that this appeal be dismissed.

4. It is noted that this appeal was heard along with W.A.No. 34 of 2022 and W.A.No. 3080 of 2021 and separate orders are being recorded on those appeals.

5. So for the present appeal is concerned, having heard the learned advocates for the respective parties and having considered the material on record, this Court finds as under:



5.1 The workman was initially engaged on 01.03.1973 and in due course he was taken on regular roll and was appointed / promoted as Non Technical Work Assistant / Bill Collector. He was terminated on 10.10.1986 without following any procedure known to law.

5.2 The workman initially tried to satisfy the Departmental Authorities to interfere in the termination but it was in vain.

5.3 The said termination was therefore challenged by the workman before the Labour Court by raising an industrial dispute, which was registered as I.D. No.15 of 1991. The Management did not participate and the award was passed ex-parte by the Labour Court on 16 May 1996 directing reinstatement of the workman with consequential benefits.

5.4 The award of the Labour Court was challenged by the Management before this Court by filing W.P.No.19755 of 2000. The matter was remanded back to the Labour Court vide order dated 17 April 2004.

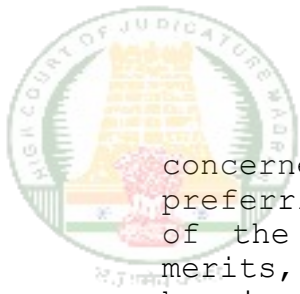
5.5 The dispute was again considered by the Labour Court. After hearing the parties and on the basis of the evidence / material on record, Labour Court found that the termination of the service of the workman was illegal. Consequently, Reference was allowed vide award dated 31 August 2004 with direction to reinstate the workman with continuity of service with back wages and all consequential benefits.

5.6 The said award dated 31 August 2004 was challenged before this Court by filing W.P.No.40241 of 2005. When the petition was listed for hearing, no one appeared on behalf of the petitioner / Management. The petition was dismissed for non-prosecution vide order dated 07 December 2015.

5.7 Review application was filed by the Management to recall the said order dated 07 December 2015. Since there was delay in filing review application, an application for condonation of delay was filed by the Management. The said petition was dismissed vide order dated 26 April 2019. While not condoning delay, learned Single Judge also recorded satisfaction, as to how, even on merits no relief could be granted to the Management. The award of the Labour Court dated 31 August 2004 was confirmed on merits.

5.8 The above order dated 26 April 2019 is challenged by the Management in W.A.No.36 of 2022.

6.1 So far challenge to the order dated 26 April 2019 is



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concerned, we find that though there was inordinate delay in preferring appeal, with a view to see to it that the grievance of the appellant/ management is considered by this Court on merits, delay was condoned and W.A.No.36 of 2022 is taken up for hearing on merits.

6.2 Having heard learned advocates for the respective parties and having considered the material on record, we find that though the petition challenging to the award of the Labour Court was dismissed for non prosecution, subsequently the merits of the matter are considered by the learned Single Judge and satisfaction is recorded to the effect that the award of the Labour Court dated 31 August 2004 could not be said to be unsustainable in any manner.

6.3 We have considered the reasons recorded by learned Single Judge in the impugned order dated 26 April 2019 by which the award of the Labour Court dated 31 August 2004 is confirmed on merits. Relevant part of the order of the learned Single Judge reads as under:-

"6.On a perusal of the award passed by the Labour Court, I find that the Labour Court has examined two witnesses; one on the side of the workman as WW1; and the other on the side of the Management as MW1. On the side of the workman, ten documents were marked as Ex.W1 to Ex.W10; and on the side of the Management, four documents were marked as Ex.M1 to Ex.M4. After considering the factual position, the Labour Court noted that in spite of earlier orders passed by the Labour Court, the Management did not produce any documents and therefore, drew adverse inference.

7.In my considered view, there is no perversity in the approach of the Labour Court and consequently, the same needs to be confirmed and no grounds have been made out by the petitioner/Board to interfere with the reasoned award passed by the Labour Court. Hence, on that ground also, the writ petition stood failed.

8.Accordingly, this writ miscellaneous petition is dismissed. No costs. The 2 nd respondent is entitled to withdraw the amount which is lying in deposit before the Labour Court by filing a petition before the Labour Court."



6.4 In view of above, we find that before concurring with the award passed by the Labour Court, learned single Judge has independently recorded the finding how the award of the Labour Court is just and proper and no interference was required therein. We do not find any error in the order passed by learned single Judge, which may call for any interference in this appeal. Further the workman is not to be blamed for delay because it was caused by the Management at each stage. Record shows that it is the management, which had less motivation to proceed with the matter on merits. We find that the award of the Labour Court dated 31 August 2004 is just and proper and the same is rightly confirmed by learned Single Judge.

7. For the above reasons, this writ appeal (W.A.No.36 of 2022) is dismissed. No costs. Consequently, connected miscellaneous petitions are disposed of.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

raa

To

The Presiding Officer,
First Additional Labour Court,
City Civil Court,
Chennai.

+1cc to M/s.S.S.Jayanthi, Advocate, S.R.No.4264
+1cc to Mrs.Kanimozhimathi, Advocate, S.R.No.4407

W.A.No.36 of 2022

SSI (CO)
PM/08/02/2022