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C.R.P.No.264 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 24.08.2022

Delivered On: 25.11.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.264 of 2020

and

C.M.P.No.1349 of 2020

L.Venkatesan

: Petitioner

Vs.

1.The Regional Transport Authority (North),
Coimbatore District,
Coimbatore.

2.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
No.37, Mettupalayam Road,
Coimbatore – 641 043.

: Respondents

(Sole Petitioner substituted vide Court Order dated 03.03.2022 made in C.M.P.No.20859 of 2021 in C.R.P.No.264 of 2020)

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, seeking to set aside the order passed by the learned



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State Transport Appellate Tribunal in unnumbered Appeal S.R.No.1173 of 2019, dated 13.12.2019 and allow this Civil Revision Petition.

For Petitioner : Mrs.S.Radha Gopalan
for Mr.K.Hariharan

For Respondent 1 : Mrs.P.Vijaya Devi
Additional Government Pleader (C.S)

For Respondent 2 : Mr.A.Sundaravadhanan

ORDER

This Civil Revision Petition had been filed seeking to set aside the order passed by the learned State Transport Appellate Tribunal in unnumbered Appeal S.R.No.1173 of 2019, dated 13.12.2019.

2.The learned Counsel for the Petitioner submitted his arguments. As per the submission of the learned Counsel for the Petitioner, the Revision Petitioner is the second Respondent before the State Transport Appellate Tribunal. As per the State Transport Appellate Tribunal Rules, the appeal from the first Respondent by the aggrieved party shall be filed within 30 days before the State Transport Appellate Tribunal. If the appeal/revision is returned by the Secretary of the State Transport Appellate Tribunal, it shall be



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rectified and the returns to be complied within 7 days. As per Rule 157(3) of the Tamil Nadu Motor Vehicles Rules, the provision of Limitation Act, 1963 (Central Act 36/1963) will not be applicable to the appeals filed under this Rule. In this case, instead of complying the defects within 7 days, the second Respondent had filed the appeal which was returned for defects, which was not complied within the specified time of 7 days as per Rule 7(2) of the State Transport Appellate Tribunal Rules. Also, the office of the State Transport Appellate Tribunal had granted 15 days time for compliance of defects in violation of Rule 7(1) of the State Transport Appellate Tribunal Rules. Instead of 7 days time, 15 days time was granted by the first Respondent to the second Respondent in this Petition who is the appellant before the Tribunal. Instead of complying the defects within the specified period of 15 days, there was further delay of 6 days. As per Rule 157 of the Tamil Nadu Motor Vehicles Rules, the Provision of Limitation Act is not applicable to the State Transport Appellate Tribunal. While so, the learned State Transport Appellate Tribunal had condoned the delay of 6 days as per order dated 13.12.2019. The Secretary of the State Transport Appellate Tribunal had placed the papers before the Chairman of the State Transport Appellate



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Tribunal. The Chairman of the State Transport Appellate Tribunal had as per Rules 7(2) issued notice to the Petitioner herein, who was the second Respondent before the Tribunal. The Petitioner herein who was the second Respondent before the Tribunal had raised objection stating that the Tamil Nadu State Transport Appellate Tribunal, Chennai, does not have the powers to condone the delay applying the provisions of the Limitation Act. The objection of the learned Counsel for the Revision Petitioner herein who was the second Respondent before the State Transport Appellate Tribunal was rejected in the light of the ruling of this Court placed reliance by the learned Counsel for the Appellant before the State Transport Appellate Tribunal in **2019-2- Writ L.R. 662 [The General Secretary, Indian Bank Employees Association -vs- Presiding Officer, Labour Court]** which is a case involving setting aside the *ex parte* decree of the Labour Court. Aggrieved by the same, the second Respondent before the State Transport Appellate Tribunal had preferred this Civil Revision Petition under Article 227 of the Constitution of India.

3.The learned Counsel for the Revision Petitioner, in support of his



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contentions, relied on the following rulings:

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3.1. In the reported decision of this Court in **2001 (1) CTC 324 [Tamil Nadu State Transport Corporation (Kumbakonam Division II) Ltd., rep. by its Managing Director, Tiruchirapalli -vs- The Regional Transport Authority, Tiruchirapalli and another]**, this Court had observed as follows:

“11. Rule 8 of the Tamil Nadu State Transport Appellate Tribunal Rules, 1989 is in pari materia with Rule 157(1) of the Tamil Nadu Motor Vehicles Rules. Hence when the petitioner failed to represent the papers within the time specified by the Tribunal, the appeal cannot be treated to have been filed within the time prescribed under the Rules. In that case, the presentation of the appeal itself is to be construed as barred by limitation. In that case, only if the Tribunal is conferred with the power to condone the delay, the Tribunal can entertain the application for condonation of the delay in order to entertain the appeal. The Tribunal has no jurisdiction to entertain the application to condone the delay. When the Tribunal is lack of jurisdiction for entertaining the application for condoning the delay in representation, naturally the appeal shall stand rejected. Hence the order of the Tribunal is sustained for the reasons stated above.”

3.2. In the reported decision of this Court in **2007 (3) CTC 389 [Muthammal Transport v. P.Swathanthirarajan]** it is held as under:

“High Court exercising jurisdiction under Article 226 has no



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power to extend period of limitation and could not direct Authority concerned to consider matter on merits without applying limitation period.”

4.The learned Counsel for the second Respondent herein, who was the Appellant before the State Transport Appellate Tribunal, relied on the ruling in reported in **2019-2- Writ L.R. 662 [The General Secretary, Indian Bank Employees Association -vs- Presiding Officer, Labour Court]** wherein it has been held as under:

“7. This being the principles to be followed, the Labour Court / Tribunal, on receipt of any such Interlocutory Application to set aside the Exparte award by condoning the delay in filing such Exparte award has to number the application, take up for hearing and consider the same on merits and in accordance with law. However, the Labour Court / Tribunal has to consider all such Interlocutory Applications and to be disposed of as expeditiously as possible. The genuinity or otherwise in respect of the reasons furnished by the respective parties are also to be considered. In any event, such applications filed to condone the delay or to set aside the Exparte award shall be adjudicated and disposed of as expeditiously as possible, so as to avoid the idea of the parties to prolong and protract the final disposal of the disputes raised. Unnecessary adjournments of such Interlocutory Applications are to be avoided. Even in case, such adjournments are sought for by the parties, the said adjournments are to be rejected strictly and the matters are to be decided on merits. The practice of allowing the disputes to go Exparte and thereafter filing an application to prolong and protract the issues also can never be encouraged and such intentions or practices of the litigants or the lawyers are to be deprecated. Thus, the Labour Courts / Tribunal must be cautious and dispose of all such Interlocutory Applications as expeditiously as possible and by considering the genuinity of the reasons furnished in such Interlocutory Applications.



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8. This being the legal principles to be followed as enunciated by the Apex Court in judgment cited supra, the present writ petition is to be considered. Consequently, the order dated 08.09.2015 passed in unnumbered Interlocutory Application of the year 2015 in I.D.No.95 of 2009 is quashed. The 1st respondent / Central Government Industrial Tribunal cum Labour Court is directed to number the Interlocutory Application filed to condone the delay in filing the set aside exparte petition and decide the same on merits and in accordance with law by affording an opportunity to all the parties concerned and thereafter, if the delay is condoned, then the other Interlocutory Applications are to be taken up for hearing and appropriate orders are to be passed as expeditiously as possible.”

Subsequently, it is the contention of the learned Counsel for the second Respondent that the appeal itself had been numbered. Also it is his contention that during the Covid-19 Lockdown there was a direction from the Hon'ble Supreme Court that strict provision of the Limitation Act cannot be invoked during the Covid-19 Lockdown. Therefore, the order passed by the learned State Transport Appellate Tribunal condoning the delay is to be treated as an exceptional circumstances and this Civil Revision Petition has no merits and the same has to be dismissed.

5.During the course of arguments, the learned Counsel for the Revision Petitioner submitted that the learned Counsel for the second Respondent had filed a memo stating that in the Revision Petition this Court had granted



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interim stay and memo was filed before the learned State Transport Appellate Tribunal. Only to clarify the same, the order was kept in abeyance. The learned State Transport Appellate Tribunal had offered remarks wherein it is stated that a memo was filed. A copy of the memo was enclosed. In the copy of the memo, it was found that there was mentioning that interim stay was granted by this Court on 27.01.2020 and posted the matter for orders on 10.02.2020 and the matter was not listed on 10.02.2020. The relevant portions of the memo is extracted as under:

“3.The 2nd Respondent have filed the written submission before this tribunal that he had challenged the order before the Hon'ble High Court in CRP (PD) No.264 of 2020. As per the written submission the Hon'ble High Court by its order dated 27.01.2020 posted the matter for orders on 10.02.2020 and granted interim stay till then. But the matter was not listed on 10.02.2020. Though the notices were served on the appellant herein, the 2nd respondent who filed the CRP have also not taken any steps to bring the CRP for hearing. Hence the CRP (PD) No.264 of 2020 is pending on the file of the Hon'ble High Court.

It is most respectfully submitted that having the 2nd respondent challenged the order of this Tribunal and obtained stay. Hence, it is most respectfully prayed that this case be decided ater the decision of Hon'ble High Court in CRP (PD) No.264 of 2020, hence the case be taken up ater the decision of the Hon'ble High Court and thus render justice.”

6.This Court on 27.01.2020 has passed the following order:

“Notice to the respondents returnable by 10.02.2020. Private notice



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is also permitted.

Post the matter on 10.02.2020 for orders.

The learned counsel for the petitioner would submit that now the appeal has been numbered and posted for hearing, hence, seeks an order of interim stay.

Considering the above submission, there shall be an order of interim stay till then.”

Therefore, the memo alleged to have been filed by second Respondent herein/Appellant before the State Transport Appellate Tribunal, Chennai is found true from the records.

7.By the time, remarks were called for and it was received from the learned Chairman, State Transport Appellate Tribunal, Chennai. On perusal of the same, it was found that the appeal preferred by the second Respondent herein as Appellant before the State Transport Appellate Tribunal was numbered as App. No.98 of 2019. Therefore, as the appeal is numbered, the learned State Transport Appellate Tribunal is directed to struck off the appeal as per Rule 7 of the Tamil Nadu State Transport Appellate Tribunal Rules.

8.On consideration of the rival submissions and on perusal of the rulings cited by the learned Counsel for the Petitioner in **2001 (1) CTC 324** is squarely applicable to the facts of this case. The reliance placed by the



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learned Counsel for the second Respondent/Appellant before the State Transport Appellate Tribunal in **2019-2- Writ L.R. 662** does not find applicable to the State Transport Appellate Tribunal Rules where as per Rule 157 of the Tamil Nadu Motor Vehicles Rules, it is clearly stated that the provisions of Limitation Act is not at all applicable. Therefore, the reported ruling cited by the learned Counsel for the Revision Petitioner squarely applies to the facts of this case.

9.The submission of the learned Counsel for the second Respondent that the Limitation Act is applicable since there was Covid-19 Lock down in the interregnum is also found unacceptable as the restriction of Covid-19 Lock down commencing from 23 March, 2020 as per R.O.C.No.1363/2020/RG, dated 23.03.2020 was gradually raised from the month of September, 2020 onwards. Whereas the orders passed by the learned State Transport Appellate Tribunal is dated 13.12.2019. The subject matter of the appeal is dated 25.09.2019 appeal in R.No.1173 of 2019 which was returned by the Office of the Tribunal for compliance. As per Rule 7 of the State Transport Appellate Tribunal Rules which states the appeal if found



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defective shall be complied with within 7 days, instead 15 days time was granted. The appeal was represented after rectifying the defects only on 15.10.2019. In spite of 15 days time granted, the second Respondent took 21 days, i.e., six days beyond the time granted, which is challenged before this Court. Therefore, the submission of the learned Counsel for the second Respondent that the subject matter of the dispute is to be upheld as the appeal was filed during Covid-19 Lockdown cannot be accepted. Hence, the said contention is rejected.

10. In the light of the above discussion, the action of the State Transport Appellate Tribunal in granting 15 days time ignoring the period of 7 days limitation as per Rule 7 of the State Transport Appellate Tribunal Rules and even after granting 15 days for compliance of defects, further period of 6 days taken by the second Respondent in this Civil Revision Petition, the appellant before the State Transport Appellate Tribunal is found unacceptable in the light of the ruling cited by the Petitioner in **2001 (1) CTC 324**. Accordingly, this Civil Revision Petition is to be allowed in the light of the above discussion.



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WEB COPY In the result, this **Civil Revision Petition is allowed.**

Consecutively, the order passed by the learned State Transport Appellate Tribunal in R.No.1173/2019 dated 13th December, 2019 condoning the delay of 6 days is set aside and App.No.98 of 2019 is struck off. No costs. Consequently, connected miscellaneous petition is closed.

25.11.2022

SRM

Index : Yes / No

Internet : Yes / No

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SATHI KUMAR SUKUMARA KURUP., J.

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**Order made in
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