



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.14457 of 2022

and

W.M.P.No.13666 of 2022

M/s.Arun Metal Company (closed)
at 60/1B, Athipalayam Road
Behind Super Machine Works Limited
Chinnavedampatti
Ganapathy Post
Coimbatore-641 006.
Rep. by its Sole Proprietrix
Ms.Madhubala
Residing at
30/3, Kottur Gardens
2nd Main Road, Kotturpuram
Chennai-600 085.

... Petitioner

vs.

The General Secretary
Coimbatore District Mill,
Engineering Miscellaneous Sectors
General Employees Union (Codimen)
Reg. No.1190/Kovai
Door No.21/9, Room No.3
India Tower 2nd Floor
19, Gopalapuram 2nd Street
Coimbatore-641 018.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to I.A.No.1/2021 in I.D.No.113/2017 on the file of the Labour Court, Coimbatore and quash that portion of the impugned order dated 09.05.2022 passed therein by which the Labour Court, Coimbatore has directed the petitioner to pay Rs.10,000/- to each of the 29 workmen covered by the above said I.D.

For Petitioner : Mr.K.V.Shanmuganathan

For Respondent : Mr.A.Deivasiganamani



O R D E R

By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

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2. According to the writ petitioner, the petitioner company is a proprietrix concerned involved in the manufacture of Aluminium Utensils for domestic purpose. Due to the matrimonial dispute between the petitioner and her husband, the business operations were stopped and the industry was closed with effect from 04.12.2014. After the closure of the petitioner unit, 29 workmen belonging to the respondent union raised an industrial dispute before the Assistant Commissioner of Labour III, Coimbatore inter alia alleging that the petitioner unit is a "public utility service" coming within the purview of Section 2 (n) (vi) of the I.D Act 1947 and that the same has been closed without issuing notice to the workmen as contemplated u/s.22(2) of the I.D Act 1947. The respondent herein prayed for reinstatement of the workmen numbering 29 with back wages, continuity of service and all other consequential benefits. After the failure of the conciliation proceedings, the dispute was referred to Labour Court, Coimbatore which had seized the same as I.D No.113 of 2017. However, the Labour Court without serving summons on the petitioner, set her exparte and passed an exparte Award on 17.07.2018 directing reinstatement of the 29 workmen with back wages and other benefis. After came to know about the exparte Award, the petitioner has filed an application in I.A.No.1 of 2021 in I.D.No.113 of 2017 before the Labour Court, Coimbatore, to condone the delay of 1058 days in filing the petition to set aside the exparte Award. The said application was allowed by the Court below by imposing cost of Rs.10,000/- to each of the employees of the respondent union. Assailing the said order, the petitioner has filed the present writ petition before this Court.

3. The learned counsel for the petitioner would submit that the Court below ought to have considered that the petitioner was not served the notice and without serving notice to the petitioner, an exparte order was passed. The said aspect was not properly appreciated by the Court below and allowed the application by imposing heavy cost on the petitioner. Challenging the portion of the said order, the instant writ petition is being filed by the writ petitioner.

4. Mr.A.Deivasingamani, takes notice for the respondent/ Employees Union.

5. On a perusal of the affidavit filed by the petitioner in I.A.No.1 of 2021, the petitioner has not whispered about the



date of knowledge of the Award passed by the Labour Court and simply stated that she came to know that the exparte Award was passed in the aforesaid I.D and thereafter, he contacted the advocate at Coimbatore and he instructed her to bring the available papers about the case and due to Covid-19, a lockdown was declared, she was not able to meet the advocate to give instruction to take steps to file a set aside petition.

6. Admittedly, the said Award was passed by the Labour Court, Coimbatore on 16.08.2018. The petitioner ought to have filed an application within a period of 30 days from the date of passing the said Award. But, the petitioner has not stated that he was not aware of the said I.D pending before the Labour Court. In her affidavit, the petitioner has not specifically pleaded the date of knowledge of the said Award and also no satisfactory explanation has been shown in the affidavit for the inordinate delay in setting aside the exparte Award. Having considered the submissions made by the learned counsel for the petitioner and perused the materials on record and also considered the decision of the Hon'ble Supreme Court, the Court below has allowed the application by imposing the cost. Aggrieved over the cost imposed to the petitioner, the present petition is filed before this Court.

7. At this juncture, it is relevant to rely upon the decision of the Hon'ble Supreme Court in the case of "Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others reported in (2013) 12 Supreme Court Cases 649, wherein it is held as follows:

32. The plea of lack of knowledge in the present case really lacks bonafides. The Division Bench of the High Court has failed to keep itself alive to the concept of exercise of judicial discretion that is governed by rules of reason and justice. It should have kept itself alive to the following passage from N.Balakrishnan (SCC pp.127-28, para 11)

"11. ... The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, never causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant



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to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

8. Therefore, in the light of the aforesaid decision of the Apex Court and also considering the fact that the dispute between the parties has been pending for the past 7 years, this Court is of the view that there is no need to interfere with the said order passed by the Court below and the present writ petition is liable to be dismissed.

9. At this stage, the learned counsel for the petitioner seeks extension of time to comply with the said order passed by the Court below.

10. Accepting the said request, this Court is inclined to grant twelve weeks time to comply the order passed by the Labour Court, Coimbatore, in I.A.No.1 of 2021 in I.D No.113 of 2017 dated 09.05.2022, from the date of receipt of a copy of this order.

11. With the above direction, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
The Labour Court,
Coimbatore.

+1cc to Mr.K.V.Shanmuganathan, Advocate, S.R.No.34332

+1cc to Mr.A.Deivasigamani, Advocate, S.R.No.34545

W.P.No.14457 of 2022
and W.M.P No.13666 of 2022

EV(CO)
UMA(04/07/2022)