



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:24.03.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.3708 of 2021

and WMP (MD) No.2979 of 2021

WEB COPY

The Management
Tower Steels (India) Limited
Sidco Industrial Estate
Kappalur,
Madurai 1

... Petitioner

Vs.

S.Chinnan (died)
1.Alagu

2.Suryaprakash

3.Jamuna

4.Manthaiammal

... Respondents

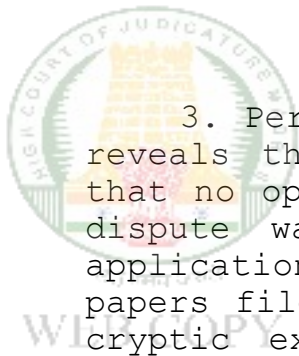
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari against the order of the labour Court passed in I.A.No.331/2015 in I.D.No.119/2002 dated 13.10.2020 calling for the records on the file of the labour Court, Madurai and quash the same.

For Petitioner	: Mr.V.O.S.Kalaiselvam
For Respondents	: Mr.K.Sudalaiyandi

ORDER

The writ on hand has been instituted to quash the order passed by the labour Court in I.A.No.331/2015 in I.D.No.119/2002 dated 13.10.2020.

2. The petitioner management states that the exparte award has been passed by the labour Court on 28.12.2010 in I.D.No.119 / 2002 directing the petitioner management to reinstate the respondent workman. To set aside the exparte award, the petitioner filed interlocutory application in IA No.331/2015. Delay of 1618 days was sought to be condoned in the said interlocutory application. The labour Court adjudicated the interlocutory application and formed an opinion that the petitioner management has not provided sufficient reasons for the purpose of condoning the huge delay of 1618 days. The findings of the labour Court reveals that the reasons stated by the petitioner are not inspired the confidence of this Court and they are unable to explain the delay for each and every day. Thus, the balance of convenience lies in favour of the workman. With the said finding, the condone delay petition was dismissed.



3. Perusal of the order passed in the interlocutory application reveals that the main ground raised by the petitioner management that no opportunity was given to them to adjudicate the industrial dispute was not considered. The award passed in interlocutory application, which is enclosed in Page No.10 of the typed set of papers filed in support of the writ petition, reveals that it is a cryptic exparte award passed by the labour Court without even assigning any reason and the said award reads as under:

"This Industrial Dispute has been raised by the petitioner above mentioned under section 2-A(2) of the Industrial Disputes Act, 1947, against the Management praying this Court to set aside the order of dismissal passed against him by the management and to reinstate him in service with backwages, continuity of service and other attendant benefit.

Record perused. Order passed. WW1 already examined. Ex.w1 to W6 were marked. Petitioner has filed petition claiming reinstatement with all consequential relief. The respondent is called absent set exparte claim proved. The non employment is not justified. The respondent is directed to reinstatement to petitioner with all consequential benefits. The petitioner also entitled for cost of Rs.1,000/- from the respondent.

Dated this the 28th of December 2010."

4. The learned counsel for the petitioner further contended that no notice was issued to them nor summons served. The representative of the management was unable to read their case before the labour Court as they were not aware of the subsequent proceedings of the labour Court as no notice or summon was issued to them. The learned counsel for the petitioner states that a written statement was filed by the petitioner management. However, there is no whisper in the award that the management was properly represented by any counsel or through representative of the management. These aspects are not considered by the labour Court in the interlocutory application filed for condoning the delay. No doubt, the delay is enormous. However, a doubt arises, whether a notice or summon has been issued to the petitioner management for adjudication of the dispute and for passing award in the industrial dispute.

5. The learned counsel for the respondent is also unable to establish that summon and notice has been issued to the writ petitioner management in the industrial dispute. There is no findings in this regard by the labour Court in the impugned interlocutory order. In the absence of any specific finding to establish that summons and notice was issued to the management, this Court is of an opinion that the exparte award deserves to be reconsidered. As far as the delay is concerned, no doubt it is enormous. However, the award seems to be cryptic and thus, this Court is of an opinion that re-adjudication is to be conducted in



the interest of justice.

6. All the cases are to be adjudicated and orders are to be passed on merits. Exparte awards can be passed only if a notice and summons are properly served to the parties and thereafter they remained absent. Even in such cases, the labour Court are bound to record in clear terms that notice and summons are served to the opposite party. If there is a doubt regarding serving of notice or summons to the opposite party, then the labour Court is expected to be slow in passing the exparte awards. In the present case, the petitioner states that no summons or notice has been issued. However, service of notice has not been issued by the respondents. The labour Court award is also silent in this regard. The impugned interlocutory order passed by the labour Court reveals that the said ground raised by the petitioner has not been considered at all. Contrarily the delay petition was dismissed merely on the ground that the delay is huge and the delay has not been explained properly. In the event of non serving of summons or notice, the question of considering the length of delay does not arise at all. Only notice and summons are served, then alone the parties are bound to explain the delay on day today basis.

7. In the present case, there is a finding in respect of the award of notice and summons to the writ petitioner, which is not established and the labour Court also not considered this vital ground and in this view of the matter, the order passed in I.A.No.331/2015 in I.D.No.119/2002 dated 13.10.2020 is quashed and the writ petition stands allowed. The labour Court is directed to restore the industrial dispute and readjudicate the issue and dispose of the matter as expeditiously as possible by affording an opportunity to all the parties, preferably, within a period of four months from the date of receipt of a copy of this order. .

8. In view of the fact that the long delay in reopening the dispute would cause prejudice to the interest of the workman, the writ petitioner is directed to pay Rs.15,000/- (Rupees fifteen thousand only) to the workman . The cost amount is directed to be paid within a period of two weeks from the date of receipt of a copy of this order and the labour Court is directed to verify the payment of cost of Rs.15,000/- to the workman before taking up the matter for hearing. Consequently connected miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2022

Sub Assistant Registrar(CS)



RR

To

The Judge,
The labour Court, Madurai

+1 CC to M/s.K.SUDALAIYANDI, Advocate (SR-14390[F] dated 25/03/2022)

+1 CC to M/s.V.O.S.KALAISELVAM, Advocate (SR-14456[F] dated 25/03/2022)

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SRR (CO)

KB (29.04.2022) 4P 4C