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W.A.No.2720/2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 24-01-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

**W.A.No.2720 of 2021**

M.Ravi

...

Appellant

-VS-

1.The Presiding Officer,  
Labour Court,  
Salem District.

2.The Management of S.527,  
Kelamangalam Agricultural Producers' Co-op.  
Marketing Society Ltd., rep. by its President,  
Kelamangalam, Denkanikottai Taluk,  
Krishnagiri District.

...

Respondents

Appeal is filed under under Clause 15 of the Letters Patent against the order, dated 01.11.2019, passed in W.P.No.4472 of 2014, on the file of this Court.

For Appellant : Mr.Stalin,  
for Mr.T.Sundarvadanam.

For Respondent 2 : No appearance



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## **JUDGMENT**

This appeal has been preferred against the order of the learned single Judge, dated 01.11.2019, passed in W.P.No.4472 of 2014.

2. According to the appellant-workman, he was dismissed from service on 06.06.2001. Pursuant to that, an industrial dispute was raised, questioning the dismissal. Since the appellant was not present, an award was passed by the Labour Court, dismissing the industrial dispute for default. The relevant portion of the award is extracted below :

### ***"AWARD***

*Petition filed u/Sec.2 (A) (2) of the I.D.Act to declare the order of the Respondent dated 6.6.2001 as illegal, void and against the principles of natural justice and to reinstate the petitioner in service with continuity and backwages.*

*P.W.1 continuously absent for several hearings. Petitioner in other I.Ds. also absent. Petition is dismissed for default. No costs."*

3. The award has come into force, as could be seen from the communication of the Labour Officer, dated 15.04.2008.



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4. An application in I.A.No.250 of 2012, dated 18.12.2012, was filed to condone the delay of 1738 days in restoring the I.D. on file. The relevant portion of the averment in the affidavit is scanned below :

2. என்னை எதிர்ப்புதாரர் தீர்மானம் 06.06.2001-ல் பண்பிக்கம் செய்து விட்டதை எதிர்த்து இந்த வழக்கை தாக்கல் செய்திருந்தேன். வேலை தீக்கத்திற்கு பிறகு எனக்கு வேறு வேலையும், உருவாங்கும் இல்லை. வழக்கு 2002-ஆம் ஆண்டில் தாக்கல் செய்ததிலிருந்து பல வருடமாக இருந்ததால் வழக்கு கண்காணிப்பு வாரியாலுக்கு அனுப்பி வைக்கப்படவில்லை. இதனால் வழக்கு விசாரணைக்கு ஒவ்வொரு வாரியாலுக்கும் வழக்கு வந்து செல்ல எனக்கு பொருளாதார வசதி இல்லை. இதனால் 2008-ம் ஆண்டு முதல் என்னால் வழக்கு விசாரணைக்கு வருவதில்லை. எனது வழக்குறையையும் தொடர்பு கொள்ள முடியவில்லை. மேலும் நான் 2008-ஆம் ஆண்டு துவக்கத்தில் மஞ்சள் காமாலை நோயினால் பாதிக்கப்பட்டு படுக்கை படுக்கையாக விட்டேன். தொடர்ந்து மருத்துவ சிகிச்சை எடுத்து வந்தேன். இந்தியாவில் தற்போது உடல்நலம் குறைவாக இருந்து வந்து விசாரித்த போது நான் எனது வழக்கு எனது ஆலோசனை காரணமாக தள்ளிப்போடும் வகையில் தீர்வு வழங்கி, கருவியாக உடல்நலக்குறைவு, தீவிரமான பொருளாதார நெருக்கடி, வருமானம், பல் பட்டினி கொடுமை காரணமாக வழக்கில் ஆலோசனை முடியாமல் போனதையும், உடனே மனுத்தாக்கல் செய்த முடியாமல் போனதையும் மனச்சுவல் வேண்டுகிறேன். எனவே இம்மனுவை தாக்கல் செய்வதில் நான் வேண்டுகிறேன் காலதாமதம் செய்வதில்லை. இருந்த போதும் சட்ட வாதிகள் படி இம்மனு தாக்கல் செய்வதில் ஏற்பட்டிருக்கின்ற 1738 நாட்கள் காலதாமதத்தை மன்னிப்பேன் வேண்டுகிறேன். இல்லாவிட்டால் நான் பரிகாரம் கிடைக்க பெறாமல் இழப்பிற்கும், பாதிப்பிற்கும் உள்ளாக நேரிடும்.

Beyond that, no other reasons were given. However, the appellant had gone into the witness box and stated that he was down with yellow fever and hence he could not file the application within time in terms of Rule 48 (2) of the Tamil Nadu Industrial Disputes Rules, 1958.



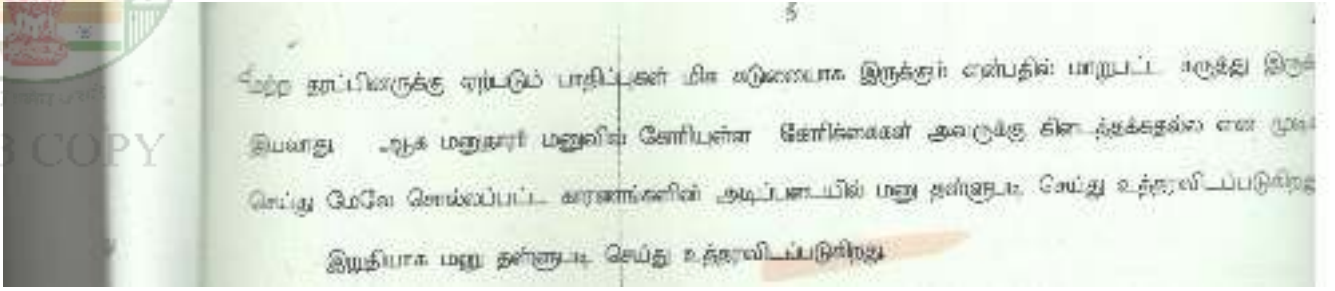
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5. The Respondent-Management had filed a counter, contending that no sufficient reasons were given in the application, except the one that the workman was taking treatment for six years under the pretext of suffering from jaundice.

6. The Labour Court, considering the pleadings of both the parties, came to the conclusion, by not accepting the case of the appellant that he was suffering from jaundice, on the ground that there was no proof and that the said contention was imaginary in nature. The relevant portion of the award is scanned below:

அடுத்தப்படப்பாக உரிய அளவில் மனு தாக்கல் செய்யாததற்கு மனுதாரர் கூறும் காரணம் ஏற்றுக்கொள்ளக் கூடியதாக என பார்வையிடும் போது தவறு மனு சர்க்கதிகளுக்கு ஆதாரமாக மனுதாரர் மருத்துவ சான்றிதழ்கள் எனதபம் தாக்கல் செய்யவில்லை குறைந்த பட்சம் நீதிமன்றத்தில் எட்டியும் கூட அளிக்கவில்லை. இந்நிலையில் சமன் 5 வருட காலமாக மஞ்சல் காயமாக நோயினால் பாதிக்கப்பட்டிருந்தேன் என மனுதாரர் கூறுவது நீர்வாக தரப்பில் கூறுவது போல் மனுவிற்சாக கண்டுபிடிக்கப்பட்ட காரணம் என்பதில் மாறுபட்டிருந்து இல்லை.

அடுத்தப்படப்பாக வருடம் காரணமாக வழக்கில் ஆதாரம் முடியவில்லையா என பார்வையிடும் போது வருடம் காரணமாக வழக்கறிஞர் வைத்துக்கொண்டு வழக்கை நடத்தவில்லை எனக் கூறும் காரணமாக கூட வகுதி கொடியம் இருப்பதாக மனுதாரர் வழக்கறிஞர் ஏற்பாடு செய்து கொண்டனம். அதற்கு மேலாக மனுதாரர் குடியிருக்கும் வேலாங்கலம் என்ற ஊருக்கும் நீதிமன்றத்திற்கும் இடையே வேகு தொலைவு உள்ளது என முடிவு செய்து இயலாது கிறுக்கின்கிர் மனப்பம் தேன்னகிக்வேண்ட வட்டத்தில் தான் மேற்கொள்ள வேண்டுகலை என்ற கள் உள்ளது. அத்தகைய வேளையில் இந்நீதிமன்றம் தரப்புகி மற்றும் ஒதுர் அடியி வந்து ஒருவொரு மாதமீழ்மாமம் சென்று வந்து கொண்டு வகுதி வேளையில் நீதிமன்றத்திற்கு வருவாயிற் காரணமாக வரவில்லை என கூறுவது கற்பனையிலும் மிக உள்ளதமான கற்பனை என்பதில் மாறுபட்டிருந்து இல்லை. அந்தவகையில் மனுதாரர் மனுவிற்சாக கூறும் காரணங்கள் நம்பத்தகுந்த காரணங்களாக நோன்றிவில்லை. இவ்வாறான குழிநிலையில் பெரியான சர்க்கதிகளை அடிப்படப்படப்பாக வைத்து மனுதாரர் கேட்டுள்ள பரிசாரம் அவருக்கு கிடைக்கத்தக்கதல்ய. அதற்கும் மேலாக 5 வருடம் காலமாக என்பது அதாரான கால தாமதம் அல்ல. இது போன்ற கால தாமதங்களை மன்னிக்கும் பட்சத்தி



Thus, the award of the Labour Court has become final in terms of Section 17 (A) of the Industrial Disputes Act.

7. Aggrieved over the award of the Labour Court, dated 29.02.2008, passed in I.D.No.180 of 2002 and the order, dated 29.07.2012, passed in I.A.No.250 of 2012, the Writ Petition was filed. The learned single Judge dismissed the Writ Petition, by not agreeing with the contention of the writ petitioner, who is the appellant herein.

8. Though it is contended by the appellant before this Court that the learned single Judge has gone beyond the scope of the writ petition by referring to regularisation, *Umadevi's* case and that the employee would not be entitled to regularisation, the said finding, in our view, is necessary to be interfered with. As contended by the appellant, the said reasons, given by the learned single Judge, may not be relevant to the issue on hand. But, in Paragraphs 2 and 3 of the order, the learned single Judge has referred to the point that there is no reason assigned with regard to condoning the delay of 1738 days in setting aside the ex-parte award.



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9. It is, no doubt, true, that when a party is absent, it is the duty cast upon the Labour Court to pass an award as if both the parties are present after calling for records from the Conciliation Officer or from the party, who is present before the Court. The award, as such, is not sustainable in the eye of law. However, in order to set aside the award and restore the I.D. on file, there should be genuine reasons for condoning the delay of 1738 days. Only after the delay is condoned, the I.D. can be restored to file. The averment that there was a delay of 1738 days in filing an application in one paragraph and that the employee was suffering from jaundice for more than six years was rightly not accepted by the Labour Court, which has been affirmed by the learned single Judge. We reiterate that issues, such as regularisation, may not be relevant to the case on hand.

10. For the sake of convenience, Rule 48 (2) of the Tamil Nadu Industrial Disputes Rules, 1958, and Section 17(A) of the Industrial Disputes Act, 1947, are extracted below :

*"48. Ex-parte Proceedings. –*

*(1) xxxx*

*(2) The Board, Court, Labour Court, or Tribunal or an Arbitrator may, for sufficient cause, set aside, after notice to the opposite party, the ex-parte decision either wholly or in part, on an application made within 15 days of the ex-parte decision :*



*Provided that an application may be admitted after the said period of 15 days, if the applicant satisfies the Board, Court, Labour Court or Tribunal or Arbitrator, as the case may be, that he had sufficient cause for not preferring the application within that period."*

*"17A. Commencement of the award.-*

*(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17: Provided that--*

*(a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or*

*(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.*

*(2) Where any declaration has been made in relation to an award under the proviso to sub- section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award under section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been made by the Central Government.*



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*(3) Where any award as rejected or modified by an order made under sub- section (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under sub- section (2) is made in pursuance of a declaration under the proviso to sub- section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub- section (2).*

*(4) Subject to the provisions of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub- section (1) or sub-section (3), as the case may be."*

11. Under the Tamil Nadu Industrial Disputes Rules,1958, an application to condone the delay will have to be filed within a period of 15 days from the date of a decision taken for setting a party ex-parte or dismissing the matter for default. The Rule also contemplates that an award has got to be passed on merits as if the other party is present. The issue with regard to recalling the award and restoring the I.D. on file may not arise as stated supra, as there are no sufficient reasons given by the appellant - employee to condone the delay and restore the I.D. on file. The Labour Court has rendered a finding of fact, which has been affirmed by the learned single Judge.



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12. In terms of Section 17 (A) of the Industrial Disputes Act, 1947, read with a decision of the Supreme Court in *Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Others*, 1980 (Supp) SCC 420, it is very clear that once the award has come into force, the Labour Court has become *functus officio*. In fact, the Labour Court ought not to have entertained the delay petition, as the Labour Court has become *functus officio*, when the application was filed in the year 2012.

13. The appellant has relied upon a decision of the Supreme Court in *M/s. Haryana Suraj Malting Ltd. v. Pool Chand*, 2018 (16) SCC 567, to state that merely because an award has become enforceable does not necessarily mean that it has become binding and for an award to become binding, it should be passed in compliance with the principles of natural justice and that an award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity.

14. We are entirely in agreement with the finding rendered by the Apex Court in the above case. An award can be interfered with by the High Court and not by the Labour Court when it becomes *functus officio*. Till the award has come into force, in the light of the decision of the Supreme Court in *Grindlays Bank's* case, cited *supra*, the Labour Court has got powers and it will not become *functus officio*.



15. In the case on hand, there is a delay of 1738 days, which was not properly explained by the appellant. Hence, we find no reason to interfere with the order of the learned single Judge. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, the connected C.M.P.No.17721 of 2021 is also dismissed.

Index : Yes/No  
Internet : Yes/No  
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(S.V.N.,J.) (J.S.N.P.,J.)  
24-01-2023

To

The Presiding Officer,  
Labour Court,  
Salem District.



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11/11



W.A.No.2720/2021

S.VAIDYANATHAN,J.

AND

J.SATHYA NARAYANA PRASAD,J.

dixit

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24-01-2023