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W.P.No.18007 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2022

PROUNOUNCED ON : 21.02.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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and

M.P.No.1 of 2014

The Management

M/s.M.S.Builders

Aslam

S/o.Inayathullah, Mulla Street, Khaderpet

Vaniyambadi, Vellore District

... Petitioner

Vs.

1.S.Lurthu

2.The Presiding Officer

The Principal Labour Court, Vellore.

Vellore.

..Respondents.

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorari calling for the entire records of the impugned award passed by the 2nd respondent dated 08.02.2011 in I.D.No.228 of 2011 and set aside the same.



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For Petitioner :: Mr.K.Umar

For respondents :: Mr.S.T.Varadarajulu for R1

R2- Court.

ORDER

This writ petition is filed by the Contractor-BUILDER who has been directed by the Labour Court to reinstate the workman-electrician in service with continuity of service, backwages and all other benefits, by the Award of the Labour Court dated 08.02.2011. The petitioner seeks to set aside the award on the ground that the impugned ex-parte award passed by the Labour Court is without assigning any reasons and it is a non speaking order and no due notice was served on him.

2. The petitioner claims to be the works contractor and take contracts of civil and electrical works in the tanneries in and around Vaniyambadi. The 1st respondent-workman was an electrician engaged by the writ petitioner-contractor in a couple of works.

3. According to the writ petitioner-contractor/Builder, there was



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absolutely no master and servant relationship existing between him and the workman. There was no monthly salary paid by the contractor. Due to quarrel between them, the 1st respondent was not engaged by the petitioner. So, the 1st respondent/workman raised an Industrial dispute before the Labour Court.

4. It is the contention of the learned counsel for the petitioner that in the I.D., writ petitioner-contractor's address has wrongly been given. So he was not served in the proceedings of the Labour Court. The writ petitioner/contractor was absent in the conciliation proceedings before the Labour Officer and the report under Section 12(4) of I.D Act was filed as "not compromised".

5. Thereafter, the 1st respondent/workman filed I.D. before the Labour Court under Section 2 A(2) of the ID Act in I.D.No.228/2010, claiming reinstatement with backwages.



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6. It is submitted by the learned counsel for the writ petitioner that the petitioner was not served with due notice by the Labour Court but passed ex parte award dated 08.02.2011 with direction to reinstate the workman with backwages.

7. Based on the ex parte award, the 1st respondent/workman filed a computation petition in C.P.No.248/2013. According to the petitioner, he was not served with any court notice in the CP also. The petitioner was set ex parte and CP was ordered on 17.12.2013 directing the petitioner to pay Rs.4,71,235/- to the 1st respondent towards arrears of salary for 58 months with interest at 9% p.a.

8. Mr.K.Umar strenuously contended that one of the friends of the writ petitioner went to the Labour Court to attend his case who heard petitioner's name called in the open court and he informed the writ petitioner. Thereafter, the writ petitioner contacted his counsel and on enquiry, it was found that 1st respondent/workman filed ID against the petitioner and got ex parte award and on the basis of the award, he got the



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computation petition also ordered exparte. The learned counsel placed reliance on the following decisions in support of his submissions that the award passed in ID.No.228/2010 dated 08.02.2011, cannot at all be considered as a speaking order and as such it cannot be sustained.

- (1) Tamil Nadu Housing Board, Madras Vs. The Presiding Officer, II Additional Labour Court, Madras and another. [1997 (1) LLJ 923.
- (2) The Chairman and Managing Director, Tamil Nadu Minerals Ltd., Chennai-5 Vs. The Presiding Officer, Industrial Tribunal, Chennai-104 and 2 others [2000 (IV) CTC 131].

9. On the other hand, Mr.S.T.Varadarajulu, learned counsel for the 1st respondent/workman submitted that before the Labour Court, the authorized representative of the writ petitioner/Contractor was called absent and was set exparte. On the side of workman, WW1-Workman was examined, Ex.P.1-Failure Report was marked. Since the claim was proved, the Labour Court allowed the ID in favour of workman. Thereafter, Computation Petition No.248 of 2013 has been filed by the



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workman. In the said petition also, authorized representative for the respondent ie. Contractor was called absent and he was set exparte. The learned Judge, Labour Court, found that valid reason and ground raised by the workman to grant the relief prayed in the computation petition and accordingly allowed the petition with a direction to the contractor/management to pay Rs.4,71,235/- towards monetary benefits with 9% interest per annum.

10. The learned counsel submits that the Builder-Contractor, who does not care to appear in the proceedings before the Labour Court even after service of notice, under the guise of no due notice served to him, cannot be considered as a ground in this writ petition. The learned counsel, thus prayed for dismissal of the writ petition.

11. Heard both sides and perused the award.

12. The writ petitioner/Builder cum Contractor has filed this writ petition challenging the Award passed in I.D.No.228/2010 dated 20.09.2010. Firstly, the petitioner has not chosen to challenge the



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consequential order passed in C.P.No.248/2013 and the further proceedings and the order passed in I.A.No.25 of 2014.

13. It is to be noted that I.A.No.25 of 2014 has been filed by the Contractor/M/s.M.S.Builders with an address showing The Management, M/s.M.S.Builders, Aslam, S/o.Ennayath, Mulla Street, Khaderpet, Vaniyambadi. The same address is shown in I.D.petition, Computation Petition also which has been filed by the workman. Therefore, the contention raised by the learned counsel for the petitioner/builder that there is no due notice served on him cannot be accepted by this court.

14. Secondly, the contention of the learned counsel for the petitioner that the award of the Labour court is a non speaking order, also cannot be sustained. The Presiding Officer of the Labour court, taken up the dispute for enquiry. The respondent/Builder-contractor was called absent and so he was set exparte. After examination of evidence on the side of the workman and marking of document, directed the respondent-Builder to reinstate the workman in service with continuity of service and backwages and all other benefits. Therefore, this court finds no substance



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in the second limb of argument also.

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15. A perusal of records would make it clear that Exparte award was passed by the Labour Court in I.D.No.228/2010 on 08.02.2011. But the petitioner has chosen to file I.A.No.25 of 2014 to condone the delay of 1039 days in filing the set aside petition against the exparte award on 26.12.2013. The Labour Court, dismissed the I.A., by pointing out that the petitioner/builder has filed some documents along with counter in C.P.No.248/2013 wherein, the Builder has mentioned just by its trade name and street name only; when that being the case, no entity like the petitioner of the company can claim because of the error in the Door Number the notices were not served upon him. The petitioner has not subjected himself for explanation in order to prove the facts alleged by him. The learned Judge thus held that because of the defect in address, the reason stated by the petitioner that no notice or summons received by them, is not acceptable. On such findings, the learned Judge, dismissed the I.A.

16. The filing of I.A., with the delay of 1039 days questioning the



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exparte award of the Labour Court, would be viewed that the writ petitioner/Builder has not taken prompt steps at the appropriate stage and the various reasons mentioned that no due notice served do not support the case of the petitioner who relied on the decision of this court reported in **1997(1) LLJ 923** and **2000 (IV) CTC 131 [cited supra]**.

17. Since the Labour Court arrived at a finding on the comparative merits of the claim and the petitioner who remained exparte all along, is not justified to challenge it on the ground of non speaking order before this court. Accordingly, I am of the view that interest of justice would be met by confirming the award of the Labour Court.

18. In the result, the Writ Petition is dismissed. The award passed in I.D.No.228 of 2011 dated 08.02.2011 by the Labour Court, Vellore, is confirmed. The Writ Petitioner/Builder, is directed to comply with the directions of the Labour Court passed in C.P.No.248 of 2013 dated 17.12.2013, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous



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petitions are closed.

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Index: Yes/No
Speaking/Non-speaking order
nvsri

To
The Presiding Officer
The Principal Labour Court, Vellore.
Vellore.



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J.NISHA BANU, J.

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