



C.M.P.No.18359
in W.A.No.1123 of 2013

C.M.P.No.18359 of 2022
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S.VAIDYANATHAN, J.
and
R.KALAIMATHI, J.

This Miscellaneous Petition has been filed to condone the delay of 250 days in filing the petition to set aside the abatement in the above Writ Appeal.

2. In the affidavit filed in support of this petition, it is stated that during the pendency of this Appeal, the 2nd Respondent/Workman passed away on 23.04.2013, leaving behind his wife, two daughters and one son as his Legal Heirs. After coming to know of the said fact, the Petitioner took steps to gather the particulars of the Legal Heirs of the deceased 2nd Respondent, in order to enable them to be impleaded in this Appeal and by that time, the panel advocate of the Petitioner/Corporation was removed from the panel and in the meantime, the case was listed before this Court on 03.01.2022 and the same came to be dismissed as abated. It is further stated that now, a new Standing counsel has been appointed and the Petitioner/Corporation entrusted the case papers to the said counsel in order to enable him to take steps to bring the Legal Heirs of the deceased 2nd Respondent/Workman on record and due to the aforesaid reasons, the delay has occurred.



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3. The learned counsel appearing for the Petitioner/Corporation submitted that the delay in filing the petition to set aside the abatement is neither willful nor wanton and hence prays to allow this petition.

4. A counter affidavit has been filed on behalf of the 5th Respondent, wherein it is stated that the 2nd Respondent who is the father of R5, died on 23.04.2013 while in service. It is further stated that the Petitioner/Corporation is very well aware of the said fact and the 5th Respondent also submitted an application dated 14.11.2013 to the Petitioner/Appellant seeking appointment on compassionate ground, pursuant to the death of his father. It is further stated that after affording several opportunities to the Petitioner/Appellant to bring the Legal Representatives of the deceased 2nd Respondent on record, this Court has dismissed the Appeal on 03.01.2022 as abated. It is further stated that only in order to drag on the matter, the Petitioner/Corporation has filed this petition belatedly after a lapse of 10 years.

5. The learned counsel appearing for the Respondents 2 to 5 submitted that the factum of death of the 2nd Respondent/Workman was duly intimated to the Petitioner/Appellant and on coming to know of the same, the Petitioner/Appellant stopped paying wages.



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6. Heard both sides. Perused the records.

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7. From the records, it is seen that during the pendency of the Writ Appeal, the 2nd Respondent/Workman passed away and despite several opportunities having been afforded to the Petitioner/Corporation, the Petitioner/Corporation has not chosen to implead the Legal Representatives of deceased Workman on record and hence, this Court has dismissed the Writ Appeal on 03.01.2022 as abated and thereafter, this Petition has been filed with a delay of 250 days. When the Workman died on 23.04.2013 and when the said fact was intimated to them, they ought to have taken steps to bring the Legal Heirs of the deceased Workman on record, but, without doing so, they have conveniently stopped paying wages and filed this petition belatedly. The conduct of the Management in this regard is highly deprecatory. We are not inclined to condone the aforesaid delay of 250 days in filing the petition to set aside the abatement.

8. The Hon'ble Supreme Court in the case of ***The Secretary to Government & Anr. Versus P.G.Venugopal (S.L.P.(C)No.15917/2022***), has imposed an exemplary costs of Rs.5,00,000/- (Rupees Five Lakhs only) on the State for having filed frivolous litigation in the Courts. Though this is a fit case to impose costs, while referring to the said judgment, we hope that the Employer will act as a model



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employer and extend the terminal and other benefits payable to the deceased 2nd Respondent/Workman, apart from extending family pension, if any, within a period of *four months* from the date of receipt of a copy of this order.

This Civil Miscellaneous Petition is dismissed with the above directions. No costs.

(S.V.N.,J.) (R.K.M.,J.)
28.04.2023

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