



Review Application (MD) No. 58 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.10.2022

Pronounced on : 02.06.2023

CORAM

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU**

Review Application (MD) No. 58 of 2016

R.Sivan

... Petitioner

-VS-

1. The Presiding Officer,
Principal Labour Court,
Madurai.

2. The Management,
Madura Coats,
Madura Coats Limited,
Vickramasingapuram,
Ambasamuthiram Post,
Tirunelveli District.

... Respondents

Prayer:- Review Application filed under Section 114 read with Order XLVII Rules 1 and 2 of the Code of Civil Procedure, 1908, praying to review the order dated 22.08.2014 passed in W.A. (MD) No. 1003 of 2014 on the file of this Court by allowing the Review Application.



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For Petitioner : Mr. R.Gowri Shankar
(Legal Aid Counsel)

For Respondents : R1 – Labour Court

Mr. T.Ravichandran (for R2)

ORDER

(Order of the Court was made by **P.D. AUDIKESAVALU, J.**)

Heard Mr. R.Gowri Shankar, Learned Counsel for the Petitioner and Mr. T.Ravichandran, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Court by order dated 27.11.2013 declined to entertain the Writ Petition in W.P. (MD) No. 19118 of 2013 filed by the Petitioner challenging the award dated 06.05.1986 in I.D. No. 283 of 1983 passed by the Labour Court, Madurai (hereinafter referred to as 'the Labour Court' for short) refusing to set aside his termination from service by the Second Respondent on the ground that there has been inordinate delay and unexplained laches, which was confirmed in appeal by order dated 22.08.2014 in W.A. (MD) No. 1003 of 2014



passed by the Division Bench of the Court.

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3. In this application for review of the said order, it has been contended by the Petitioner that he had approached the erstwhile Tamil Nadu State Legal Aid and Advice Board for preferring the Writ Petition in the High Court against the award dated 06.05.1986 in I.D. No. 283 of 1983 passed by the Labour Court in the year 1986 itself and he could not be blamed for the delay caused thereafter so as to deprive him of his legitimate rights. In the affidavit filed in support of the Writ Petition, the Petitioner has stated as follows:-

“7. The Petitioner respectfully submits that there is no willful delay on the part of the Petitioner in filing the present Writ Petition seeking to quash the order of termination as well as the findings of the labor Court. The actual facts is that the Petitioner is not able to meet out the expenses incurred in filing of the cases due to his unemployment and poverty and therefore, he has approached the legal aid services authorities of the Principal Seat of this Hon'ble Court. The Hon'ble Court Legal Aid Committee, Chennai has originally nominated a panel lawyer Mr. opal and unfortunately the said panel lawyer died.



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Thereafter, the materials relevant papers handed over to the said panel lawyer are not possible to obtain by the Petitioner.

Subsequently another legal aid panel lawyer Mr. Majesties has been nominated on the request of the Petitioner on 09.07.2013.

On 24.07.2013, the said panel lawyer opined that the matter should be prosecuted before the Madurai Bench. Therefore on receipt of the available papers the present panel lawyer has been nominated on 04.09.2013 by the High Court Legal Services Committee, Madurai to file the present Writ Petition.

Only therefore the Petitioner has contacted the present legal aid panel lawyer to process the matter. Accordingly, the present Writ Petition is being filed and hence absolutely no willful delay on the part of the Writ Petitioner.”

4. It has been brought to the notice of this Court by the Secretary of the High Court Legal Services Committee in the report dated 05.10.2021 that though it is true that a request was made by the Petitioner seeking legal aid as claimed by him, it was closed on 03.12.1986 as there was no response from him as reflected from the available records maintained in that regard and after he



had made a fresh application for legal assistance on 09.07.2013, an Advocate was nominated to file the Writ Petition.

5. Having regard to this factual backdrop, reference must be made, at once, to the decision of the Hon'ble Supreme Court of India in *Sankara Cooperative Housing Society Ltd. -vs- M. Mahabharata* [(2011) 5 SCC 607] in which taking note of the earlier rulings, the legal position has been succinctly explicated as follows:-

“54. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:

- (1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.*
- (2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to*



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others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

- (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.*
- (4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.*
- (5) That representations would not be adequate explanation to take care of the delay.”*

Tested with reference to the aforesaid principles, it must be noticed here that the explanation of the Petitioner has been unsatisfactory for the inaction on his part in pursuing the matter for nearly 27 years from 03.12.1986 to 09.07.2013,



which cannot be brushed aside. That apart, in furtherance to the order passed on 26.10.2021 by the Court calling for the copies of the entire records in the Industrial Dispute in I.D. No. 283 of 1983 from the Labour Court, the Presiding Officer of the Labour Court by Proceedings in D. No. 774 dated 18.11.2021 has informed the Registry of this Court as follows:-

“ I submit that, the entire records in I.D. 283/1983 has been submitted to the Hon'ble High Court, Madurai Bench of Madras High Court, Madurai as per the reference 3rd cited above. While submitting the entire records, Ex. M1 to M35 could not be able to submit since the same were handed over to the party through Application for return of document No. 11/86 of this Court in the year 1986 on undertaking. This circumstance has been submitted to the Hon'ble High Court, subsequently a notice has been sent to the party (Madurai Coats Limited, Docudramas) as well as to the counsel on record to the return the above documents. In pursuant to the letter of this Court, the party / respondent filed a memo stating that “The counsel who represented on behalf of the Respondent / Management, in this case (Thiru V.V.Krishnamachary) expired on 08-10-2010, and the officials



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working during the period (1986) are not in their service and hence whereabouts of the said documents are not known by them.

Due to the long gap of 30 years (From 1986) only on 2016, when the Petitioner filed a Revision Petition (58/2016 in W.A. (MD) No. 1003/2014) came to the knowledge of Respondent, and the documents and the case bundle are not traceable and were not preserved, by them, the management is unable to return the documents right now.””

The only possible inference that could be drawn from this incontrovertible fact situation is that on account of the delay and laches on the part of the Petitioner coupled with the absence of availability of the documents in Ex. M-1 to Ex. M-35, which have been heavily relied upon by the Labour Court in arriving at the conclusions in its award, it would not be possible for this Court at this distance of time to delve into the merits of the controversy. Moreover, on a perusal of the grounds raised by the Petitioner in the Writ Petition assailing the award of the Labour Court, it is seen that the Petitioner blames the Respondent for not producing proof of service of the various notices calling upon him to re-join duty and attend the enquiry, but curiously the Petitioner does not have any answer for his long absence from duty, which has been found to be



unauthorized, resulting in treating it as voluntary abandonment of job and not termination by the Second Respondent, and that his service had been discharged and he had not been dismissed from service without following the prescribed procedure in that regard.

6. At this juncture, it must be recapitulated that the Writ Court cannot substitute the decision of the Labour Court merely because another view is possible, and the Hon'ble Supreme Court of India in ***General Manager, Electrical Rengali Hydro Electric Project, Orissa -vs- Giridhari Sahu*** [(2019) 10 SCC 695] has explained the scope of Writ of Certiorari to interfere on an error of law apparent on the face of record in the following words:-

“28. On the conspectus of the decisions and material, we would hold as follows: the jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of certiorari will not don the cap of an appellate court. It will not reappreciate evidence. The writ of certiorari is intended to correct jurisdictional excesses. A writ of prohibition would issue when a tribunal or authority has not yet concluded its proceedings. Once a decision is rendered by a body amenable



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*to certiorari jurisdiction, certiorari could be issued when a jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may arise from the procedure adopted by the body after validly assuming jurisdiction. It may act in violation of principles of natural justice. The body whose decision which comes under attack may decide a collateral fact which is also a jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being interfered with by a writ of certiorari. As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter “off bounds” for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law. An error of law which becomes vulnerable to judicial scrutiny by way of certiorari must also be one which is apparent on the face of the record. As held by this Court in **Hari Vishnu Kamath v. Ahmad Ishaque** (AIR 1955 SC 233) as to what constitutes an*



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error apparent on the face of the record, is a matter to be decided by the court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amenable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down (see Parry & Co. Ltd. [Parry & Co. Ltd. v. P.C. Pal, AIR 1970 SC 1334 : (1969) 2 SCR 976]).”

Inasmuch as the Petitioner has not been able to establish any flaw in the decision-making process of the Labour Court while passing the impugned award dated 06.05.1986 in I.D. No. 283 of 1983, the same cannot be interfered by the Court.

In the result, the Review Application, which is devoid of merits, is dismissed. No costs.



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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

The Presiding Officer,
Principal Labour Court,
Madurai.



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(R.M.D., J.)

(P.D.A., J.)

02.06.2023



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AND
P.D. AUDIKESAVALU, J.**

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