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W.P.No. 31 and 32 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2024

DELIVERED ON : 29.07.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.31 and 32 of 2014
and M.P.No.1 of 2014

The Management of
TTG Industries Ltd
36 College Road
Chennai 600 006
represented by its Director
Mr.V.Ravi Srinivasan

... Petitioner in both W.Ps

Vs

1. The Presiding Officer
I Additional labour court
Chennai
2. Thiru C Selvaraj
11 Thiruvalluvar 2nd Cross Street
TMP Nagar
Padi
Chennai 600 050
3. K.Rajakumari
4. S.Jerin
5. S.Jabin

Respondents 3 to 5 are substituted as legal representatives of the deceased Respondent-2, C.Selvaraj as per order dated



W.P.No. 31 and 32 of 2014

16.02.2017 by M.S.J. in WMP Nos, 36826 and 36827/2016 in
WP No.31 and 32/2014

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... Respondents in both W.Ps

Prayer in W.P No. 31 of 2014

Writ Petition filed under Article 226 of the Constitution of India seeking Writ of Certiorarified Mandamus calling for the records of the first respondent in ID No.259 of 1998, quash its order dated 06.11.2007 and direct the first respondent to hear the dispute on merits by providing adequate opportunities to the petitioner.

Prayer in W.P No. 32 of 2014

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records of the first respondent in IA No.243 of 2011 in ID No. 259 of 1998 and quash its order dated 18.02.2013.

For Petitioner : Mr.P.Raghunathan
in both W.Ps For T.S Gopalan & Co

For Respondent 1 : Labour court
in both W.Ps
Respondent 2 : Deceased
in both W.Ps



W.P.No. 31 and 32 of 2014

For Respondents 3 to 5 : Mr.K.V. Ananthakrishnan
in both W.Ps

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COMMON ORDER

A common order is being passed since the facts involved in both the writ petitions are one and the same. W.P. No 31 of 2014 is filed challenging the order dated 06.11.2007 in I.D 259 of 1998. W.P. No 32 of 2014 is filed challenging the order in I.A.No.243 of 2011 in I.D. No. 259 of 1998.

2. The factual matrix is as follows:

(i) The 2nd respondent, workman was appointed as a draughtsman in the petitioner company on 13.02.1991. On 06.06.1997 besides the petitioner, two others working in the drafting section were terminated, which the petitioner states was on account of lack of business. All the three were paid their terminal benefits.

(ii) In June 1998, the 2nd respondent filed a claim statement in



I.D.No.259 of 1998. The 2nd respondent contended that he was suddenly retrenched from services on 08.06.1997 and he was given a month's notice pay which is contrary to law. He was paid a sum of Rs.4,050/- per month at the time of his retrenchment. The 2nd respondent had further contended that the petitioner-Company had engaged new hands after retrenching the 2nd respondent. The retrenchment was not only contrary to the Industrial Disputes Act but also to the standing order and principles of natural justice. The 2nd respondent had raised an industrial dispute before the Labour Officer-II, Kuralagam and the learned officer submitted her failure report. Thereafter, I.D.No.259 of 1998 was filed by the 2nd respondent seeking his reinstatement with backwages, continuity of services and other attendant benefits.

(iii) The petitioner had filed a counter in January 1999 *inter-alia* contending that they had a project division wherein less than 50 workmen were engaged and the 2nd respondent was appointed



as a Draughtsman for this project. In 1997, they did not have many projects and had no work for the workmen and they had decided to downsize their manpower. Apart from the 2nd respondent, another Draughtsman and a Project Engineer were terminated. The 2nd respondent was informed about the reason for termination in the petitioner's order dated 06.06.1997.

(iv) The petitioner would state that even the Conciliation Officer had advised the 2nd respondent to receive some exgratia payment as settlement as she found the termination to be genuine. Though initially the 2nd respondent had agreed to receive the compensation, later he reneged on it. Therefore, conciliation failed. The petitioner further contended that they had suffered further deterioration of the business and had ultimately closed down the drafting section. The petitioner denied the 2nd respondent's claim that new hands were engaged. Since the termination was for genuine reason, the petitioner prayed for dismissal of the I.D.



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3. Though the petitioner had filed their counter, they did not participate further in the proceedings and ultimately an *ex-parte* award was passed on 06.11.2007. The 2nd respondent had examined himself as W.W1 and marked exhibits W1 to W23. This *ex-parte* award is the subject matter of challenge in W.P.No. 31 of 2014.

4. Thereafter, in February 2009, the petitioner filed I.A.No.243 of 2011 to condone the delay of 689 days in filing the affidavit to set aside the *ex-parte* award .

5. In the affidavit filed in support of these petitions, the petitioner would submit that in the year 2001, the Company was referred to the BIFR and on 17.08.2005, the Company was declared sick. Operations came to an end in 2004 and the land and factory of the petitioner was leased to 3rd parties in the year 2007. After 2004, there was no one to keep track of the cases and they also did not have



the resources or energy to liaison with their advocates and prosecute or defend its cases. It was only when they had received the legal notice dated 02.02.2009 that they came to know about the award. Hence, they came forward with this petition.

6. The 2nd respondent submitted that the Company becoming sick had nothing to do with the workman and the inaction of the personal department cannot be taken into consideration for condoning the delay. After deliberately allowing the case to be dismissed for default, the petitioner cannot seek to have the delay condoned.

7. The I Additional Labour Court, Chennai by its order dated 18.02.2013 dismissed the petition stating that no valid reasons have been given except for stating that the Company was not doing well.

8. The learned counsel for the petitioner would submit that the award in I.D.No.259 of 1998 is a totally non- speaking one and on this ground alone, the delay has to be condoned and the petitioner be



permitted to contest the I.D afresh. Even the order in I.A. No. 243 of 2013 does not give reasons for the dismissal. The relief granted is unworkable as the petitioner company is non-functional. He would rely on the following judgements.

1. **(2006) 13 SCC 619 Kerala Solvent Extractions Ltd Vs.**

A. Unnikrishnan and another in support of his argument that relief granted by the courts must be seen to be logical and tenable within the framework of the law.

2. **2013 SCC online Mad 2317 - Commissioner Tirupur**

Municipality, Tirupur Vs. The Presiding Officer, Labour Court, Chennai and others to buttress his argument that a speaking order should be given even if it is an *ex-parte* award.

9. Per contra, the learned counsel for the 2nd respondent, at the outset, would submit that the 2nd respondent, workman is no more and



even assuming without admitting that the writ is allowed and the matter is remitted back to the Labour Court, the 2nd respondent's legal heirs will not be in a position to contest the case afresh as they do not have any personal knowledge about the working conditions of the deceased 2nd respondent. Further, when the 2nd respondent was alive, he had agreed to receive a sum of Rs 3,50,000/- as a one time settlement which the petitioner was not agreeable to . He would submit that on the death of the petitioner, section 17B payment was also stopped. He would submit that the petitioner has come to court after a considerable delay and therefore the writs have to be dismissed on the ground of laches.

10. Heard the counsels on either side and perused the materials available on record.

11. The petitioner, who had filed a counter before the Labour



Court, had thereafter chosen not to participate in the proceedings. In their affidavit filed in support of the condone delay petition, the petitioner would state that the petitioner-Company was declared a sick company by order dated 17.08.2005 and that from 2004, they did not have anyone to follow up the cases and therefore, the Industrial dispute was allowed to go *ex-parte*. A perusal of the notes of proceedings would indicate that the petitioner was contesting the case till March 2007. In the month of March 2007, the matter was referred to mediation and since mediation had failed, it was returned back to the Court. Further, the petitioner has not filed any document to prove their contention that the petitioner Company was declared a sick industry. This is the only reason given for condoning the delay and the same has not been proved. Therefore, there is no valid reason for the delay of 689 days in filing the petition to set aside the *ex-parte* award. The Labour Court has rightly dismissed the petition and therefore, W.P.No.32 of 2014 is dismissed.



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12. Since the order in I.A. No. 243 of 2011 in I.D No. 259 of 1998 is confirmed by the dismissal of W.P.No.32 of 2014, consequently WP No. 31 of 2014 is also dismissed. There shall be no order as to costs. Miscellaneous petition is closed.

29 .07.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn

To

The Presiding Officer
I Additional labour court
Chennai



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W.P.No. 31 and 32 of 2014

P.T.ASHA, J.,

srn

W.P.No.31 and 32 of 2014
and M.P.No.1 of 2014

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