



W.P.No.20399 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.20399 of 2021

and

WMP.No.21656 of 2021

S.Prasath Sivanesan

...Petitioner

Vs

1. The Joint Commissioner of Labour/
Authority of the Payment of Wages Act
Coonor,
Nilgiri District.

2.K.Chandramohan,
Deputy Director of Industrial Safety & Health,
No.13, Kandappa Street,
Brough Road,
Erode-638 001.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the order passed by the 1st respondent in Sa.Pa.Sa.Case



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No.P.W.1/2019 dated 08.03.2021 and quash the same.

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For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Mrs.Mythrayee Chandru,
Special Government Pleader
for R1.

No appearance for R2.

ORDER

Writ petition is filed challenging the order passed by the 1st respondent in Sa.Pa.Sa.Case No.P.W.1/2019 dated 08.03.2021 and quash the same.

2. The petitioner is a cottage industry engaged in the manufacture of paper goods. The petitioner, even though had permanent workers, considering the nature of work load, the petitioner out sourced workers through agencies on temporary basis and settled their respective salaries through the agencies and hence, there were no wages pending to any



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employee either permanently or temporarily. While so, the 2nd respondent

Deputy Director of Department of Industrial Safety and Health approached the 1st respondent to initiate proceedings against the petitioner stating that the petitioner had not paid minimum wages to 11 employees, who worked in the petitioner's industry. In pursuance of the complaint of the 2nd respondent, the 1st respondent initiated proceedings under Sections 15(2) and 16 of the Payment of Wages Act, 1936 . The petitioner received summons from the 1st respondent to appear for enquiry in Application No.1 of 2019 and he entered appearance and filed counter on 26.11.2019. Thereafter, the enquiry was adjourned. Meanwhile, the petitioner was diagnosed with cancer and he had to undergo surgery and treatment for the same. The petitioner was discharged from the hospital on 31.03.2020. Even after discharge from hospital, the petitioner was advised to take rest for one year. Due to the aforesaid facts, the petitioner was not able to follow up the case even though he had filed the counter as early as on 26.11.2019. After recovering from his ailment the petitioner approached the



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1st respondent in the month of April 2021 and was shocked to know that the impugned order was passed *ex parte* on 08.03.2021. Challenging the said ex-parte order, the petitioner has filed the above writ petition.

3. The learned counsel for the petitioner submits that as the petitioner was diagnosed with cancer due to his prolonged treatment, he was not able to participate in the enquiry proceedings. He therefore prayed that under the circumstances, an opportunity should be given to the petitioner to contest the case on merits.

4. The learned counsel for the 1st respondent on the other hand submits that the 1st respondent adjourned the matter several times *viz.*, on 10.03.2020, 15.12.2020 and 02.02.2021, but as the petitioner failed to utilise the opportunities the impugned order cannot be faulted.

5. I have heard both the learned counsels and have perused



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the materials placed on record.

6. It is seen from the counter that the hearing dates of 10.03.2020, 15.12.2020 and 02.02.2021 all relate to the pandemic period. The petitioner has categorically stated in the sworn affidavit that he was diagnosed with cancer on 02.03.2020 and hospitalized for surgery. The petitioner was discharged only on 31.03.2020 and even thereafter, he was advised to take rest for at least one year. The above said facts clearly show that the petitioner was unable to attend the enquiry, only because of his ailment, which was serious in nature.

7. In the light of the above facts and circumstances, I am of the view that the petitioner should be given an opportunity to contest the case on merits before the 1st respondent. Accordingly, the *ex parte* impugned order dated 08.03.2021 is set aside and the matter is remanded to the 1st



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respondent for fresh consideration. The 1st respondent is directed to issue notice of personal hearing to the petitioner, conduct the enquiry and thereafter pass orders on merits and in accordance with law. The petitioner is directed to produce all supporting documents at the time of hearing. The 1st respondent shall pass orders within a period of four (4) weeks from the date of receipt of a copy of this order by giving notice of personal hearing as aforesaid.

Accordingly, the writ petition is allowed. No costs. Connected W.M.P. is closed.

24.01.2024

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

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To

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N.MALA,J.

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