



WEB COPY



W.P. No.30412 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2024

CORAM:

THE HON'BLE MS. JUSTICE R.N. MANJULA

W.P. No.30412 of 2024

K. Mohan Doss

Petitioner

vs.

The Employer
Soundararaja Mills
Nedungadu
Karaikal

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the award dated 02.02.2024 made in ID (L) No.40 of 2012 on the file of the Industrial Tribunal-cum-Labour Court, Puducherry, quash the same and consequently remand the matter to the Industrial Tribunal-cum-Labour Court, Puducherry, for disposing of the same on merits, in accordance with law and as per the Division Bench judgment dated 19.08.2019 passed in W.A. No.1226 of 2018.

For petitioner

Mr. P.R. Thiruneelakandan



ORDER

WEB COPY This writ petition has been filed impugning the award dated 02.02.2024 passed by the Industrial Tribunal-cum-Labour Court, Puducherry (for brevity "the Industrial Tribunal") in I.D. (L) No.40 of 2012 preferred by the petitioner/workman.

2. The facts in a nutshell leading to the filing of this writ petition are as below:

2.1 The petitioner/workman raised the above industrial dispute challenging his dismissal from service on 04.05.2005. In fact, initially, an award was passed on 06.10.2017 by partly allowing the aforesaid industrial dispute with a direction to the respondent Management to reinstate the petitioner/workman in service, however, with 30% backwages.

2.2 The said award dated 06.10.2017 was challenged by the respondent Management in W.P.No.6565 of 2018 which was dismissed *vide* order dated 22.03.2018. Thereagainst, the respondent Management preferred an intra court appeal in W.A.No.1226 of 2018. In the said writ appeal, the Division



WEB COPY

Bench, *vide* judgment dated 19.08.2019, set aside the order impugned passed by the Single Bench as well as the award dated 06.10.2017 passed by the Industrial Tribunal and remanded the matter to the Industrial Tribunal to pass orders afresh after holding a fresh enquiry.

2.3 At that stage, the petitioner/workman filed a memo dated 05.01.2024 stating that he is not pressing the industrial dispute. *Ergo*, recording the said memo, the Industrial Tribunal, *vide* award dated 02.02.2024, dismissed I.D. (L) No.40 of 2012 for non-prosecution and the said award is put to challenge in this writ petition, as stated in the opening paragraph.

3. The main bone of contention of the learned counsel for the petitioner is that the memo dated 05.01.2024 was filed by the petitioner/workman's representative without properly understanding the legal position involved in the matter and hence, the impugned award of dismissal for non-prosecution has to be quashed and the petitioner/workman be given an opportunity to contest the industrial dispute on merits.



4. On a perusal of the memo dated 05.01.2024 inviting an award of dismissal of the industrial dispute for non-prosecution, it is seen that there are averments to the effect that the petitioner/workman was dismissed from service when the conciliation proceedings were pending before the Labour Officer, Conciliation and hence, the same can be challenged under Section 33(C)(2) of the Industrial Disputes Act, 1947.

5. By coming to the above understanding, the memo dated 05.01.2024 was filed for not pressing the pending industrial dispute in I.D. (L) No.40 of 2012. To be noted, on the very same ground, the petitioner/workman had earlier filed a computation petition in C.P. No.11 of 2012 in which an order was passed on 07.12.2017 dismissing the computation petition. While dismissing the computation petition, it was observed in the order that the petitioner/workman had already been granted relief in I.D.(L) No.40 of 2012 *vide* award dated 06.10.2017 and hence, the claim invoking Section 33(C)(2), *ibid.*, cannot be entertained.

6. Thus, when the order dated 07.12.2017 was passed in C.P.No.11 of 2012, I.D. (L) No.40 of 2012 had already been partly allowed vide award dated 06.10.2017 and it was no longer pending on the file of the Industrial



Tribunal. In other words, by taking cognizance of the fact that I.D. (L) No.40 of 2012 had already been partly allowed on 06.10.2017, the Industrial Tribunal had dismissed the computation petition on 07.12..2017 by observing that the petitioner/workman's claim had become infructuous. The order dated 07.12.2017 passed in the computation petition was not challenged by the petitioner/workman subsequently. This fact would only go to show that the petitioner/workman was content with the award dated 06.10.2017 passed in I.D. (L) No.40 of 2012. However, the petitioner/workman was deprived of the benefit he got out of the award in I.D. (L) No.40 of 2012, inasmuch as, in W.A.No.1226 of 2018 preferred by the respondent Management, the Division Bench, *vide* judgment dated 19.08.2019, had set aside the order passed by the Single Bench dismissing the writ petition filed by the respondent Management. Thus, the matter was remitted to the Industrial Tribunal for passing orders afresh in the industrial dispute, after holding enquiry in accordance with law.

7. However, the petitioner/workman had chosen to file a memo dated 05.01.2024 subsequent to the judgment dated 19.08.2019 of the Division Bench, stating that his rightful remedy would be by way of filing a computation petition invoking Section 33(C)(2), *ibid.* at his own risk. But, it



is possible that the petitioner/workman would not have been advised properly by his representative who is not a legal expert. Even though in labour law jurisprudence, there is no compulsion for a workman to engage the services of an advocate, it is for his best advantage and benefit that he can engage the services of a co-worker or representative of a trade union. As there is a possibility for a better cordiality between the representative and the workman, the workman can also prefer to appear through any such representative, in case, he is not able to engage an advocate.

8. In the instant case, it is patent that the petitioner/workman's representative had omitted to take note of the fact of filing of a petition under Section 33(C)(2), *ibid.*, on the ground that the petitioner/workman was dismissed from service during the pendency of the conciliation proceedings and without getting an order of approval from the Conciliation Officer. Having obtained a negative order in the said petition by raising the said ground, the rightful course open to the petitioner/workman is to prefer an appeal challenging the said order. It is apparent that the petitioner/workman did not prefer to challenge the order dated 07.12.2017 passed in the above petition, in view of the fact that he had got his remedy in the award passed in the industrial dispute on 06.10.2017. Even though he had got an award in the



industrial dispute, he had filed a petition under Section 33(C)(2), *ibid.*, probably because he thought that in the event of the petition being allowed, he would be entitled to full backwages.

9. The petitioner/workman had not chosen to file that petition at the earliest instance. Instead, he had chosen to raise an industrial dispute in which he had got an award for reinstatement with 30% backwages. Then, the petitioner/workman should have been properly advised to file a writ petition challenging the portion of the award denying him the balance 70% backwages. Whatever may be the case, in the writ appeal filed by the respondent Management, the matter was remanded to the Industrial Tribunal. In such a case, the petitioner/workman ought not to have taken the risk. It appears that the petitioner/workman had tried to get better advantage at each stage by not getting proper advice.

10. Though the industrial dispute is dismissed by the Tribunal *vide* the impugned award in view of the memo filed by the petitioner/workman for not pressing the industrial dispute, taking into consideration the extraneous circumstances elaborated above and in order to meet the ends of justice, I feel that it is appropriate to set aside the impugned award of dismissal and to restore the industrial dispute to file.



11. In normal course, if an award dismissing the industrial dispute is passed by appreciating the merits of the case or due to the default on the part of the workman, an order to set aside the said award when challenged, shall not be made without putting the other side (Management) on notice. In the instant case, the impugned award dismissing the industrial dispute came to be passed in view of the memo filed by the petitioner/workman without involving the respondent Management. As the petitioner/workman had filed the memo to not press the industrial dispute due to some improper advice and that caused dismissal, notice to the respondent Management is dispensed with in this writ petition. However, it is recorded that the respondent Management should be informed about this order and the consequential restoration of the industrial dispute, through the Labour Court.

12. In view of the above reasoning and observation, this impugned award dated 02.02.2024 passed by the Labour Court in I.D.(L) No.40 of 2012 is set aside and as a consequence, the said industrial dispute is restored to the file of the Labour Court for fresh disposal on merits.

13. A copy of this order shall be served on the respondent Management through the Labour Court before the proceedings are going to



W.P. No.30412 of 2024

be continued in I.D.(L) No.40 of 2012 and sufficient opportunity be given to both the parties during the trial and then, the industrial dispute shall be disposed of on merits.

With the above relief and directions, this writ petition stands disposed of. No costs.

17.10.2024

cad

To

1. The Industrial Tribunal-cum-Labour Court With a direction to serve a
Puducherry copy of this order on the
respondent Management.
2. The Employer
Soundararaja Mills
Nedungadu
Karaikal



WEB COPY



W.P. No.30412 of 2024

R.N.MANJULA, J.

cad

W.P. No.30412 of 2024

17.10.2024