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W.P. No. 19974 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON	02142025
PRONOUNCED ON	12/03/2025

PRESENT:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P. No.19974 of 2020

and

W.M.P. No. 24654 of 2020

M/s. Karaikal Co-op Milk Supply Society,
Rep. by its Assistant Superintendent Mr.Kannabiran,
(KCMSS), Karaikal,
Puducherry ...Petitioner

Vs.

V.Ramakrishnan
S/o. Veerasamy,
Main Road, Nadakudy,
Sirupulliyur, Nannilam Taluk,
Thiruvavarur District. ...Respondent

Prayer in W.P.

To issue a Writ, Order or Direction and in particular, a Writ in the nature of Certiorarified Mandamus, calling for the records on the file of the Presiding Officer, Industrial Tribunal, Puducherry relating to the Impugned Order dated 30/01/2020 in I.A.No. 36 of 2019 in I.D.(L) No.27 of 2016 and quash the same and consequently allow the I.A.No.36



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of 2019 in I.D.(L) No. 27 of 2016 on the file of the Presiding Officer,
Industrial Tribunal and pass such further or other orders.

Prayer in W.M.P.

To stay operation of the Award of the Presiding Officer, Industrial Tribunal, Puducherry herein dated 05.12.2018 in I.D.(L) No.27 of 2016 and all further proceedings pursuant thereto, pending disposal of the main writ petition and pass such further or other orders.

Appearance of Parties:

For Petitioner: M/s. T. Sai Krishnan, Mr. L. Poovendra Perumal and
Ms. S. Janani, Advocates.

For Respondent: M/s. Xavier Felix and Ms. A. Kamachi, Advocates .

J U D G M E N T

Heard.

2. The petitioner, the Management of the Co-operative Milk Society at Karaikal, has filed this writ petition challenging the order dated 30.01.2020 passed in I.A. No. 36 of 2019 in I.D. (L) No. 27 of 2016, whereby the interim application filed under Section 11-B of the Industrial Disputes Act, 1947, read with Rule 10(B)(9) of the Industrial Disputes



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(Central) Rules, 1957, was decided.

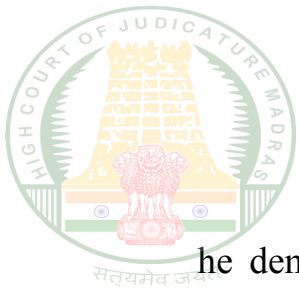
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3. Through the interim application, the management sought to set aside the ex parte award dated 05.12.2018 passed by the same Labour Court. In the said award, the Labour Court held that the workman was entitled to receive accounts related to his gratuity, subsistence allowance from 11.05.2001 until his retirement, payment of retirement benefits, compensation for mental agony, and damages for false charges.

4. The writ petition was admitted on 22.01.2021, and an interim stay was granted in the W.M.P. while the petition was pending. The workman entered an appearance through his counsel.

5. The respondent workman contended that he joined the petitioner society as a temporary employee on 17.08.1973. His services were subsequently regularized on 01.06.1984, and he remained in employment until 11.05.2001. Initially appointed as a clerk, he was later promoted to the position of Technical Supervisor.

6. According to the workman, his wages were not paid regularly, and



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he demanded the payment of outstanding wages through a letter dated 20.04.2001. He was transferred from the Refrigeration Department on 16.04.2001 and later suspended on 11.05.2001. The following day, on 12.05.2001, he submitted a resignation letter. However, the petitioner did not issue any letter of acceptance. Subsequently, on 04.06.2001, he sought to withdraw his resignation and requested reinstatement. As there was no response, he issued a legal notice and later filed W.P. No. 49256 of 2006 before this Court.

7. This Court, by its order dated 03.11.2010, directed that the workman's representation dated 31.05.2005 be considered. Several years later, on 03.04.2014, the petitioner society issued a letter stating that his resignation had been accepted on 11.06.2001. The society further alleged that, despite this, he had failed to return the milk cans in his custody and had misappropriated a sum of Rs. 48,300/-, which he had purportedly admitted. Consequently, the respondent society sent him a cheque for Rs. 41,236/- after deducting Rs. 48,300/-.

8. Subsequently, the workman raised a dispute before the Labour Officer, Karaikal, seeking his outstanding benefits. Following the failure



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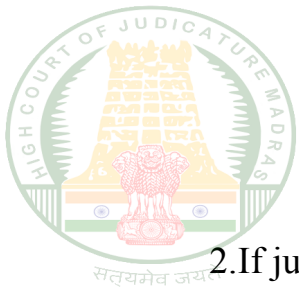
report dated 10.08.2016 issued by the Labour Officer, he filed a claim statement before the Industrial Tribunal-cum-Labour Court, Puducherry.

The dispute was registered as I.D.(L) No. 27 of 2016, and notice was issued to the petitioner society.

9. For reasons best known, when the dispute was listed on 17.04.2018 for the filing of the counter by the management, the counsel for the petitioner did not appear. It was stated that the counsel was unable to attend due to the bereavement of a close relative. However, the Industrial Tribunal-cum-Labour Court proceeded to set the management ex parte and recorded the evidence of the respondent workman on 03.05.2018, designating him as PW1. On his behalf, eight documents were submitted and marked as Exhibits P1 to P18.

10. In the ex parte award, the Tribunal framed the following three issues for consideration:

1. Whether the dispute raised by the petitioner against the respondent, seeking proper accounts for the gratuity amount, subsistence allowance from 11.05.2001 until retirement, retirement benefits, compensation for mental agony, and damages, is maintainable?



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2.If justified, what relief is the petitioner entitled to?

3.Whether the industrial dispute can be allowed?

11. On the first issue, the Tribunal held that the appropriate government has the authority to refer a dispute of this nature. Regarding the second issue, in paragraph 11, the Tribunal observed as follows:

“Under these circumstances on appreciating oral and documentary evidence adduced on the petitioner side, the Court hold that the petitioner is entitled for the relief as claimed in the industrial dispute with regard to his proper accounts the gratuity amount and pay the outstanding gratuity amount and pay the subsistence allowances from 11.05.2001 till his date of retirement and pay the retirement benefits alone. Accordingly, it is decided the point Point No.1 and 2.”

12. On the third issue, in paragraphs 12 and 13, the Tribunal held as follows:

“For the foregoing reasons discussed above and as answered for the Points No.1 & 2, and it is conclude that this industrial dispute has deserves to be allowed partly with regard to his proper accounts the gratuity amount and pay the outstanding gratuity amount and pay the subsistence allowances from 11.05.2001 till his date of retirement and pay the retirement benefits alone



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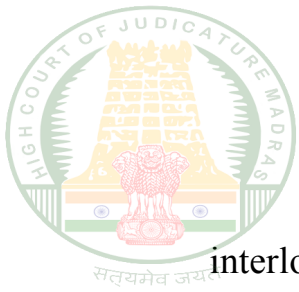
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and regarding compensation for his mental agony and damages for the claim of alleged false charges against the petitioner is dismissed and the court is decided Point No.3 accordingly.

In the result, the Industrial Dispute (Labour) is allowed partly, and the respondent is hereby directed to give proper accounts regarding gratuity amount and pay the outstanding gratuity amount and pay the subsistence, allowances from 11.05.2001 till date of retirement, pay the retirement benefits alone to the petitioner. And, regarding the claim of the compensation and damages for the alleged charges against the petitioner is hereby dismissed. There is no order as to costs.”

13. The award was published in the Government Gazette on 12.03.2019. Subsequently, the management filed an application under Section 11 seeking to set aside the ex parte award dated 05.12.2018 through their application dated 11.04.2019. This application was registered as I.A. No. 36 of 2019, and the workman filed a counter statement on 19.10.2019, contending that the reason for the management's absence was not genuine and that no petition for condonation of delay had been filed.

14. The Tribunal, by its order dated 30.01.2020, dismissed the

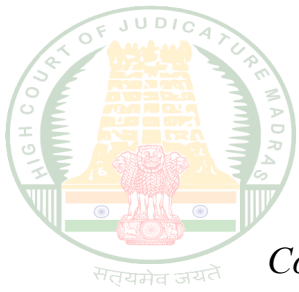


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interlocutory application. It observed that, even prior to 17.04.2018, the petitioner management had failed to appear on three previous hearings, as well as on 03.05.2018, when the matter was posted for ex parte evidence. Furthermore, the application to set aside the ex parte award was filed after a delay of one year and six months, with no satisfactory explanation provided for the delay.

15. The counsel for the management relied on the judgment of the Supreme Court in Haryana Suraj Malting Ltd. v. Phool Chand, reported in (2018) 16 SCC 567, arguing that the Tribunal does not become functus officio and retains the power to set aside an ex parte award. Reliance was placed on the following passages from paragraphs 35 and 36:

“35. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour



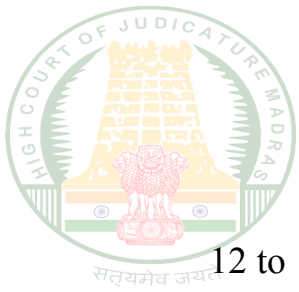
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Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent.

36. We may also add that when an application for setting aside an ex parte award is made at the instance of the management, the Labour Court/Tribunal has to balance equities. The appeals are hence disposed of as follows. The awards are remitted to the Labour Court for consideration as to whether there was sufficient cause for non- appearance of the management. Since the litigation has been pending for a long time, we direct the appellants to pay an amount of Rs.1,00,000/- in each case to the workmen by way of provisional payment. However, we make it clear that the payment is subject to the final outcome of the awards and will be adjusted appropriately. We record our deep appreciation for the gracious assistance rendered by Mr. Shekhar Naphade.”

16. The counsel also referred to a judgment of a Single Bench of this Court in *United Labour Federation v. The Presiding Officer & Ors.*, reported in MANU/TN/3968/2023. Reliance was placed on paragraphs



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12 to 14 of the judgment, which are as follows:

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“12. The learned Senior Counsel for the petitioner also relied upon the Judgment of the Hon'ble Supreme Court of India reported in 2018 (16) SCC 567 in the case of Haryana Suraj Malting Limited Vs Phool Chand, in which the Hon'ble Supreme Court of India held that in case a party is in a position to show sufficient cause for its absence before the Labour Court/ Tribunal when it was set ex parte, the Labour Court/Tribunal, in exercise of its ancillary or incidental powers, is competent to entertain such an application. That power cannot be circumscribed by limitation. What is the sufficient cause and whether its jurisdiction is invoked within a reasonable time should be left to the judicious discretion of the Labour Court/Tribunal.

13. A perusal of the affidavit filed in support of the delay in representing the application for restoration of industrial dispute revealed that after taking the petition to comply the returns, the petition was misplaced in its counsel's office at the time of renovation. Therefore, the petitioner was unable to re-present the paper on the stipulated time and the same was re-presented only with a delay of 1003 days.

14. Therefore, this Court felt the reasons stated in the affidavit filed in support of the condonation of delay in re-presenting the application for restoration is satisfied and the labour Court ought to have allowed the petition. That apart, the labour Court cannot dismiss the industrial dispute for default.”

17. In this case, the management did not challenge the ex parte



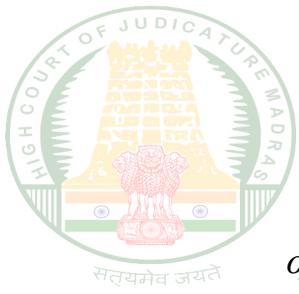
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award but only the dismissal of the interlocutory application, which sought to reopen the ex parte decision. In support of this, the learned counsel referred to a judgment of a Division Bench in *The Management of Murali Enterprises v. The Presiding Officer, I Addl. Labour Court, Chennai*, reported in MANU/TN/8171/2021, and relied upon the following passage from paragraphs 6 and 7:

“6. Learned Counsel for the 2nd respondent further submitted that the appellant has not questioned the correctness of the award which argument does not carry any weightage. The reason being that when the I.A.No.226/2002 in I.D.No.414/1995 was dismissed by the 1st respondent herein against which W.P.No.31167/2003 was filed that was also dismissed against which W.A.No.1133/2011 was filed with delay, the delay application is allowed by this Court in the light of the decision of the Apex Court reported in (1981) 2 Supreme Court Cases 788 in Rafiq and another vs. Munshilal and another that for the fault on the part of the counsel, poor litigant should not be put to any prejudice. Therefore, this argument shall not carry any weightage either before this Court or before the Labour Court.

7. In view of the foregoing reasons, the order passed in W.P.No.31167/2003 dated 7.1.2009 by the learned Single Judge is set aside subject to the payment of Rs.15,000/- (Rupees Fifteen Thousand Only) payable by the appellant herein to the 2nd respondent worker, within two weeks from the date of receipt of a copy of this Order and the matter is remitted back to the I Additional Labour Court, Chennai, who shall take up the matter and dispose of the same on merits and in accordance with law, after giving opportunity

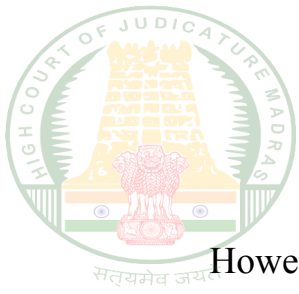


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of hearing to both sides, within a period of eight weeks thereafter. The parties are also directed to co-operate with the 1st respondent Labour Court.”

18. Although the conduct of the management is blameworthy, as they failed to appear for several hearings before the ex parte decision and did not even file a counter statement in the main industrial dispute, and despite the fact that they have not sought to set aside the ex parte award in this writ petition, they cannot be nonsuited on this ground alone. This is because the very maintainability of the dispute raised by the workman under Section 2A of the Industrial Disputes Act is doubtful. The said provision pertains to an individual workman's dispute concerning non-employment. The only saving factor is that the workman, in raising such a dispute, did not have the support of other workmen to facilitate adjudication before a competent forum. Otherwise, any monetary dues payable by the management could be recovered through an application under Section 33C(2) of the Industrial Disputes Act. Furthermore, claims related to gratuity must be adjudicated exclusively before the authorities under the Payment of Gratuity Act, and not under the Industrial Disputes Act, as clarified by the Supreme Court in *State of Punjab v. Labour Court, Jullundur*, reported in (1980) 1 SCC 4.



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However, these issues can be relegated for future adjudication.

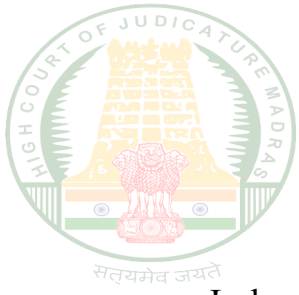
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19. In this case, it is sufficient to note that on 17.04.2018, when the management's counsel was absent due to the bereavement of a close relative, the Tribunal could have granted one more opportunity to the management.

20. In light of the above, the writ petition in *W.P. No. 19974 of 2020* is allowed. The order dated 30.01.2020 in *I.A. No. 36 of 2019 in I.D.(L) No. 27 of 2016* is set aside, and the matter is remitted to the Tribunal for fresh disposal in accordance with the reasons stated herein. However, as directed by the Supreme Court and this Court in the judgments referred to above, such reconsideration cannot be granted without imposing conditions. Accordingly, the petitioner is directed to pay the respondent a sum of Rs. 20,000/- as a pre-condition for *I.A. No. 36 of 2019 in I.D.(L) No. 27 of 2016* to be reheard by the Tribunal. Consequently, the Miscellaneous Petition in *W.M.P. No. 24654 of 2020* stands closed.

12.03.2025

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

The Presiding Officer,
Industrial Tribunal cum Labour Court,
Puducherry.
(with records if any)



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P. No.19974 of 2020
and
W.M.P. No. 24654 of 2020

12.03.2025