

(2011) 10 MAD CK 0039

In the Madras High Court

Case No : Writ Petition (MD) No's. 7736 and 7936 of 2007 and Cont. P. (MD) No. 703 of 2010 and M.P. (MD) No's. 1, 1 of 2007, 1 of 2009, 2 and 3 of 2007

Management St. Joseph's High School,(now named as
Manalmadha Hr. Sec. School)

APPELLANT

Vs

Antony Chandrabose and The Presiding Officer, Labour Court,
Tirunelveli
M. Antony Chandra Bose Vs Edward

RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Constitution of India, 1950 — Article 30
Industrial Disputes Act, 1947 — Section 17B, 2, 2A(2)
Limitation Act, 1963 — Section 5
Tamil Nadu Industrial Disputes Rules, 1958 — Rule 48(2)

Citation : (2011) 10 MAD CK 0039

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Ajmal Khan, for the Appellant; M.V. Venkataseshan for R1, for the Respondent

Final Decision : Dismissed

Judgement

Honorable Mr. Justice K. Chandru

1. W.P. (MD) No. 7736 of 2007 and W.P. (MD) No. 7936 of 2007. These two Writ petitions were filed by the same petitioner management.

2. In the first Writ petition, the challenge was to the order passed by the 2nd respondent / Labour Court, Tirunelveli in I.A. No. 102 of 2005 in I.D. No. 47 of 1994 and seeks to set aside the same and also to condone the delay in filing the application to set aside the ex parte award dated 02.07.2004.

3. The second Writ petition was filed by the same management of the School challenging the ex parte award dated 02.07.2004 passed in I.D. No. 47 of 1994 and to quash the same.

4. The first Writ petition was admitted on 25.09.2007. Pending the Writ petition, this Court granted an interim stay of the impugned order.

5. The second Writ petition was admitted on 22.11.2007. Pending the Writ petition, this Court granted an interim stay. Subsequently, the contesting 1st respondent filed an application for vacating the interim stay petition in W.P. (MD) No. 7736 of 2007 and also for a direction to pay monthly wages in terms of Section 17-B of the Industrial Disputes Act and also to pay an arrears of Rs. 2,38,900/-. This Court by order dated 02.07.2010 directed to pay the arrears u/s 17-B at the rate of Rs. 1,310/-per month from the month of July 2010. Also by order dated 14.07.2010 a direction was issued to pay Rs. 2,70,340/-being the last drawn pay.

6. In view of the non payment of the amount as directed by this Court vide order dated 02.07.2010, the contesting respondent filed a Contempt petition No. 703 of 2010 for the alleged disobedience of the order passed in M.P. (MD) No. 2 of 2009 in W.P. (MD) No. 7736 of 2007. When the Contempt petition came up on 14.12.2010, the learned counsel for the management informed that they have preferred a Writ Appeal against the interim order. But, however, since the contempt arose out of the interim order and as the main Writ petitions itself was pending for more than four years, this Court directed both the main Writ petitions to be listed for final disposal along with the Contempt Petition.

7. Accordingly, by consent of both sides, the main Writ petitions were taken up for disposal.

8. It is seen from the records that the contesting respondent raised industrial dispute u/s 2 A(2) of the Industrial Disputes Act. He was working as an Attender (Officer Assistant) in the petitioner school. According to him, he was denied work with effect from 13.08.1992. The Conciliation Officer as he could not bring about mediation, gave his failure report. On the strength of the failure report, he filed a claim statement dated 28.04.1994 before the Labour Court, Tirunelveli. The said dispute was registered as I.D. No. 47 of 1994 and notice was given to the management of the school. They also filed a counter statement dated 07.09.1994 erroneously contending that Article 30 of the Constitution will apply to the management and the remedy under the Industrial Disputes Act will not be available to the workman. They also raised another contention that in view of the amendment made to the definition of the term "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act excluding the educational institutions. The Industrial Dispute is not maintainable.

9. On merits of the case they have stated that the termination was valid and the workman was owning a cycle shop at Sockankudiyiruppu. He was also remanded to Police custody with reference some political issues. It is the case of the management that the workman was not willing to attend the school. Hence, there was no case made out. In the mean while, an application was filed for impleading the Correspondent of Manalmadha High School, Chokkankudiyiruppu,

Tuticorin by I.A. No. 55 of 2003 and the same was also allowed. The Correspondent of the school was brought as the 2nd respondent in the I.D.

10. But when the matter came up on 02.07.2004, the management did not appear and the workman examined himself as P.W.1 and 7 documents which were marked as Exs.W1 to W7. On the basis of that evidence, the Labour Court held that the claim was proved and the name of the management has changed into Manalmadha Higher Secondary School and therefore, as the claim was proved and an award was passed as prayed for with a cost of Rs. 200/-. Significantly, in the award passed in I.D. No. 47 of 1994, the Labour Court did not go into the merits of the allegations. Even though it was an ex parte award it made a cryptic remark that the claim was proved and award was made as prayed for. After the said ex parte award, the management which was (by them renamed), filed an application to set aside the ex parte award under Rule 48(2) of the Tamil Nadu Industrial Disputes Rules. There was a delay in filing the said application, i.e., 224 days from the date of their getting notice of the award on 11.02.2005 and 54 days from 06.04.2005 from the date of filing the application. The condone delay application filed (wrongly styled as an application filed u/s 5 of the Limitation Act) was registered as I.A. No. 102 of 2005. Notice was ordered to the contesting respondent.

11. The contesting respondent filed a counter statement dated 18.05.2005. In the affidavit filed in support of the application it was stated that the management came to receive the notice on 31.01.2005 directing them to appear on 11.02.2005. It is only after seeing the notice, they came to know about the pendency of the I.D. Thereafter, they went to the Labour Court and after getting a copy, they approached the Advocate and in that process there was a delay.

12. On notice of the said application, the contesting respondent filed a counter statement stating that the averments made by the petitioner's school was false and contrary to the truth. Since the application for amendment of the name was accepted, they are aware of the proceedings and even though the Labour Officer sent a notice asking them to come and collect the award, they did not appear and hence, the application was not bona fide. Accepting the objection raised by the workman, the Labour Court dismissed the interim application in I.A. No. 102 of 2005 on 02.08.2007. This became the subject matter of the 2nd respondent in W.P. (MD) No. 7736 of 2007.

13. In the impugned order, the Labour Court held that the amendment application was allowed by the Court and the notice on the amendment application, was received by the management. The contention that the counsel one C.P. Fernando passed away on 02.05.2001 may be true. But, the authorized representative appearing for the workman statement that cannot be a ground for the delay was accepted by the Labour Court. It was observed they should have made alternative arrangement by engaging another counsel in the place of Late C.P. Fernando, the learned counsel appearing for the management. Since the reasons given by the management was not believable, the application cannot be

entertained. Therefore, it has to be seen that whether the Labour Court was right in refusing to condone the delay and take up the main dispute for adjudication on merits.

14. It must be noted that the management by way of abundant action has filed the present Writ petition in W.P. (MD) No. 7936 of 2007 challenging the original ex parte award, contending the said award is bereft of any reason and the Labour Court while passing the award had not dealt with merits of the case.

15. Under Rule 48(2) of the Tamil Nadu Industrial Dispute Rules 1958 an ex parte award can be made by the Labour Court as if the other side is represented and it must render reasons for passing the award. Even if the application for condoning the delay is not accepted, it did not prevent this Court from examining the ex parte award, which has been independently challenge in the second Writ petition. The issue raised in that Writ petition is no longer les integral. A Division Bench of this Court in Tamil Nadu Housing Board, Madras Vs. The Presiding Officer, II Additional Labour Court, Madras reported in 1997 (1) LLJ 923 dealt with the similar award passed by another Labour Court. It was held that even if the other side was absent, the Labour Court should discuss the materials and cannot pass any cryptic award without reasons. In paragraphs 6, 7 and 8 of the Division Bench judgment it was observed as follows:

6. Thus, from the aforesaid award, it is clear that the Labour Court has not considered the evidence on record. Even though the appellant remained absent, nevertheless, there was evidence on record. There were the statements of the case pleaded by the petitioner and the respondent. The Labour Court was required to consider and give reasons for passing the award in favour of the 2nd respondent workman. As no sufficient reason is given, not even the facts of the case are sated, the award cannot at all be considered to be a speaking order, as such it cannot be sustained. The Presiding Officer is an officer of the District Judge grade. He should not have decided the dispute in such a manner. There is no judicial application of mind of the Presiding Officer of the Labour Court. Such exercise of jurisdiction causes great and incalculable damage to the parties and also to the administration of justice. The Presiding Officer would do better, if he discontinues such a habit of disposal of cases.

7. As the delay is also due to the fact that the appellant has failed to avail the opportunity afforded to it, it is a case, in which exemplary costs should be awarded.

8. We, accordingly, allow the appeal, set aside the order dated February 8, 1996 passed in the Writ petition, and allow the Writ petition in the following terms. The award dated March 28, 1994 passed in I.D.309 of 1993 is quashed with costs of Rs. 5,000/-(Rupees Five thousand only) to be paid by the appellant to the 2nd respondent on or before September 18, 1996 on which date the Labour Court, Madras, shall call this case and restore the I.D. to its file.....

16. In the light of the above, the Writ petition stand allowed the case cited the

Division Bench had ordered cost of Rs. 5,000/-to be paid to the worker because of the laxity in conducting the case by the management, while allowing the W.P. (MD) No. 7936 of 2007 a cost of Rs. 5,000/-is ordered to be paid to the 1st respondent.

17. Since W.P. (MD) No. 7936 of 2007 is allowed, it is unnecessary to go into the merits of the application in which orders were passed by the Labour Court and challenged in W.P. (MD) No. 7736 of 2007. Hence, that Writ petition is dismissed as infructuous.

18. It is stated by the learned counsel for the workman that the management had delayed the conducting of the case for the last 17 years and the I.D. No. 47 of 1994. Therefore, even to defend the proceedings, he requires some subsistence allowance. Already this Court on the basis of an ex parte award had granted Rs. 1,310/-per month and that order must be complied with. Further the terms of the order dated 02.07.2010 will continue for another period of 6 months within which the Labour Court must dispose of the I.D. No. 47 of 1994 in accordance with law and on merits.

19. The Supreme Court vide judgment in Fakirbhai Fulabhai Solanki Vs. Presiding Officer and Another, has held that even for the matter is remanded when the matter is pending before the Labour Court, the Court has got power to grant subsistence allowance and in the light of the principle laid down therein, the direction given herein to continue to pay Rs. 1,310/-for next 6 months, is ordered.

20. The other two objections raised by the management need not be relegated to the Labour Court to decide the issue again with reference to the maintainability of the application under the Industrial Disputes Act that in respect of a minority institution. The question is no longer less integral. The Supreme Court vide judgment in Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others, has authoritatively held that a minority institution is bound to implement the labour laws. In respect of non teaching staff working in an educational institution, the provisions of the Industrial Disputes Act will squarely apply. Therefore, that objection must fail.

21. The second objection is in respect of the amendment to the term "Industry" u/s 2(j) of the Industrial Disputes Act, excluding the educational institutions from the purview of the Industrial Disputes Act, by virtue of the amendment made under the Central Act 46/1982 is concerned. It must be noted that the said amendment is yet to be notified by the Central Government. Therefore, the management cannot place any reliance upon a still born unnotified legal provisions. Therefore, the second objection found in the counter affidavit must also fail. The management is well advised to file their counter statement on merits and get on with the case on merits.

22. In view of the fact this Writ petition in W.P. (MD) No. 7736 of 2007 was allowed and this Court had already gave direction to comply with the orders

dated 02.07.2010 and extending the relief another 6 months the management is expected to obey the said order. In that view of the matter there is no need to pursue the contempt and the Contempt petition No. 703 of 2007 stands closed.

23. It is made clear if the management files a memo of complying with the order dated 02.07.2010 and gives an undertaking to continue for next 6 months, the I.D. No. 47 of 1994 will be taken up by the Labour Court for disposal. If the said payment is not paid within 4 weeks and a cost memo is not filed before the Labour Court, the I.D. award passed on 02.07.2004 will stand revived, without further reference to this Court.

24. In the light of the above, the W.P. (MD) No. 7936 of 2007 is allowed with the directions noted above and with costs. W.P. (MD) No. 7736 of 2007 stands dismissed as infructuous. Contempt Petition (MD) No. 703 of 2006 stands closed in the light of the observations made. Consequently, connected M.Ps. are closed.