

(2014) 11 MAD CK 0406

In the Madras High Court

Case No : Writ Petition Nos. 12182 and 13797 of 2007

Tamil Nadu Small Industries Corporation Limited

APPELLANT

Vs

M. Krishnan

RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A(2)

Citation : (2014) 11 MAD CK 0406

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Judgement

D. Hariparanthaman, J.—The petitioner Management appointed the first respondent as Water Carrier cum Gardener on 08.12.1991 temporarily. The first respondent workman sought for regularisation of his service. However, he was orally terminated from service on 01.04.2003. According to the petitioner, while he sought for regularisation of service, when he put in more than ten years of service, he was simply terminated.

2. The first respondent workman took up his non-employment before the second respondent Labour Court in I.D. No. 255/2003, when his conciliatory efforts failed.

3. The petitioner Management, though filed counter statement before the second respondent Labour Court, did not pursue the matter and remained ex-parte.

4. Hence, an ex-parte award dated 17.11.2005 was passed by the second respondent Labour Court reinstating the first respondent workman in service, with backwages, continuity of service and all other attendant benefits.

5. Thereafter, the petitioner Management filed an application in I.A. No. 209/2006 in I.D. No. 255/2003 before the second respondent Labour Court to condone the delay of 205 days in filing the application to set aside the ex-parte award.

6. The aforesaid application in I.A. No. 209/2006 in I.D. No. 255/2003 was rejected by the second respondent Labour Court on 28.12.2006.

7. In these circumstances, the petitioner Management filed a writ petition in W.P. No. 12182 of 2007 seeking to quash the aforesaid order dated 28.12.2006 passed in I.A. No. 209/2006 in I.D. No. 255/2003.

8. Subsequent thereto, the petitioner Management filed another writ petition in W.P. No. 13797 of 2007 seeking to quash the ex-parte award dated 17.11.2005 passed by the second respondent Labour Court in I.D. No. 255/2003.

9. Heard the submissions made by the learned Senior Counsel for the petitioner. There is no representation for the first respondent though notice sent through Court as well as privately was received by him.

10. The impugned ex-parte award dated 17.11.2005 in I.D. No. 255/2003 is extracted hereunder:

AWARD

Petition dated 09.08.2003 filed U/s. 2A(2) of I.D. Act to set aside the oral termination dated 31.03.03 and reinstate the petitioner into service with backwages with continuity of service and with costs.

(2) No representation by respondent and respondent's counsel. Ex-parte order was passed against the respondent on 10.11.05. Steps not taken by respondent side so far. Hence, petitioner is examined as PW1. Ex.P1 to P8 are marked, Heard, evidence of PW1 and the documents prove that oral termination of the petitioner is not justified by the respondent. Respondent doesn't come forward to dispute the claim of the petitioner prayed in this petition. Hence, claim of the petitioner is proved.

(3) Petition is allowed as prayed for directing the respondent to reinstate the petitioner into service within 3 months from the date of this award with continuity of service and backwages. Respondent is also directing to pay Rs.200/- towards the costs of the petitioner.

Pronounced by me in open court this the 17th day of November 2005. Presiding Officer Labour Court, Salem.

11. The impugned award does not contain any reason. The petitioner Management filed counter statement. The first respondent workman got examined himself as a witness and also produced 8 documents and the same were marked as Exs.P1 to P8. Hence, it is incumbent on the part of the second respondent Labour Court to pass a speaking award on merits, even if the employer remains ex-parte. The impugned award was not passed on merits. It was ipse dixit without containing any reasons for allowing the claim of the first respondent workman.

12. A Division Bench of this Court in Tamil Nadu Housing Board, Madras Vs. The

Presiding Officer, II Additional Labour Court, Madras and Another, and also a learned single Judge of this Court in The Chairman and Managing Director, Tamil Nadu Minerals Ltd., Chennai 5 Vs. The Presiding Officer, Industrial Tribunal, Chennai 104 and two others, have categorically held that even in the case of ex-parte award, the Labour Court should pass a detailed award on merits, otherwise, the same is liable to be set aside.

13. In the present case on hand, as per the averment of the petitioner Management, as found in the typed set of papers, the first respondent workman joined in the lowest post on daily wages basis in 1991. He worked for 12 years. Thereafter, he was orally terminated from service, when he sought for regularisation. In fact, he approached the authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. But his application was rejected by the authority by an order dated 10.07.2003 that is enclosed at page No. 15 of the typed set of the petitioner Management on the ground that the first respondent workman was already terminated from service and unless the termination order is set aside, the authority could not direct the employer to regularise his service.

14. In view of the above, I am of the considered view that the impugned award is liable to be set aside and the same is quashed and I.D. No. 255 of 2003 is remanded back to the second respondent Labour Court to decide the matter on merits within a period of four months from the date of receipt of a copy of this order.

15. Further, the pleadings makes it clear that at the time of termination, the first respondent workman was paid @ Rs.52/- per day. He was a full time employee. Hence, I am of the view that the petitioner Management shall deposit the backwages from the date of termination, till today @ 52/- per day as admitted by them in their pleadings to the credit of I.D. No. 255/2003 on the file of the second respondent Labour Court, within a period of 12 weeks from the date of receipt of a copy of this order. If the writ petitioner Management fails to deposit the amount, the writ petition will stand dismissed automatically.

16. Until the I.D. No. 255 of 2003 is disposed of, the first respondent workman is not permitted to withdraw any amount that would be deposited by the writ petitioner Management. If the first respondent workman is successful in the industrial dispute, the workman is permitted to withdraw the amount with the accrued interest, if the writ petitioner Management fails to challenge such an award within a period of three months after the receipt of the same. It is needless to state that in the event of the writ petitioner succeeds, he is entitled to withdraw the amount along with the accrued interest. In the meantime, the Labour Court is directed to keep the said amount in fixed deposit to the credit of I.D. No. 255 of 2003 initially for a period of six months and thereafter, renew it until the passing of the award.

17. The writ petition in W.P. No. 13797 of 2007 is disposed of in the above terms.

18. In view of the order passed in W.P. No. 13797 of 2007, no order is necessary in W.P. No. 12182 of 2007 and the same stands closed. No costs. Consequently, connected miscellaneous petitions are closed.