

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

WP.No.23555 of 2015

and

MP.No.1 of 2015

TWAD [Tamil Nadu Water Supply &
Drainage Board], Special Division,
rep.by the Executive Engineer of TWAD Board,
Hosur, Dharmapuri District.

... Petitioner

Versus

1.G.Vijayakumar
2.The Presiding Officer
Labour Court, Salem.

... Respondents

Prayer:-Writ petition filed under Article 226 of the Constitution of India praying for a issuance of a writ of certiorari calling for the records of the 2nd respondent made in IA.No.93/2011 in IA.No.75/2010 in ID.No.350/1998 on the file of the Labour Court, Salem dated 12.12.2012 and quash the same.

For Petitioner : Ms.S.Thamizharasi

For Respondents : Mr.S.Selvaraj for
M/s.S.Arunachalam Associates for R1

ORDER

Heard the learned counsel for the petitioner and Mr.S.Selvaraj, learned counsel appearing for the 1st respondent and with their consent, the writ petition is taken up for final disposal.

2. The writ petition has been filed challenging the order passed by the Labour Court, Salem, in IA.No.93/2011 in IA.No.75/2010 in ID.No.350/1998. In fact, the said order passed

by the Labour Court dated 12.12.2012 is a common order in these interlocutory applications and another interlocutory applications in IA.No.94/2011 in IA.No.76/2010 in ID.No.351/1998. The petitioner Board challenged the order in IA.No.94/2011 in IA.No.76/2010 in ID.No.351/1998 by filing writ petition in WP.No.23224/2015 which was dismissed by this Court vide order dated 16.11.2015. The operative portion of the order dated 16.11.2015 reads as follows:-

"8.Though this is the allegation made in the affidavit, the petitioner Board did not give any specific reasons as to how they came to know about the exparte award whether their contentions were substantiated by any communications as to whether they applied for any certified copy etc. Thus, the affidavit filed in support of IA.No.76 of 2010 is bereft of particulars.

9.Subsequently, another Interlocutory Application was filed in IA.No.158/2010, wherein a prayer was made to set aside the ex-parte order of dismissal dated 12th November 2010. The said order appears to be an order rejecting the petition in IA.No.76/2010. However, the certified copy of the order has not been filed in the typed set of papers. Thereafter, another application was filed in IA.No.94/2011, wherein the prayer was made to condone the delay of 100 days in filing the restoration of IA.No.76/2010 which was dismissed for default on 12th November 2010. This application for restoration was heard by the Labour Court and after assigning elaborate reasons, the labour Court has dismissed the said application. Aggrieved by the same, the petitioner is before this Court.

10.As pointed out earlier, the 1st affidavit which was filed by the petitioner Board before the Labour Court was filed only during May 2010, wherein they sought for setting aside the order dated 31st October 2008. The delay from 31st October 2008 to May 2010 was not properly explained and there is no sufficient cause shown except to blame the counsel engaged by the

Board. Thereafter, IA No.76/2010 was filed and the same was dismissed for default on 12th November 2010. Setting aside the order of dismissal dated 12th November 2010, the petitioner Board filed an application to condone the delay of 100 days in filing the restoration in IA.No.76/2010. Thus, at every stage of the matter, the officers of the petitioner have shown their lethargic attitude, delay is unexplained and the reasons assigned in the affidavit filed in support of IA.No.94/2011 is also blaming the counsel stating that the petitioner counsel has not made a proper prayer before the Labour Court.

11.This reason can hardly be a reason to justify that the petitioner Board was prevented from approaching the Labour Court within the time prescribed. The petitioner is a statutory Board and it has got a large number of officers to defend their cases and take care of their legal matters. Therefore, the delay which has occurred in the matter of defending these proceedings has to be held to be unexplained to the satisfaction of the Court below. The Court noted that there is a delay of 556 days in setting aside the proceedings.

12.One more disturbing feature is that even though the labour court, rejected the petition, by an order dated 12th December 2012, the petitioner has approached this Court only by filing the writ petition during July 2015, i.e., after three years. This delay also has not been properly explained and all these factors are sufficient to hold that the impugned order does not call for any interference.

13.Accordingly, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed."

In the light of the above, the writ petition is dismissed.
No costs. Consequently, the connected miscellaneous petition is
also dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

AP

To

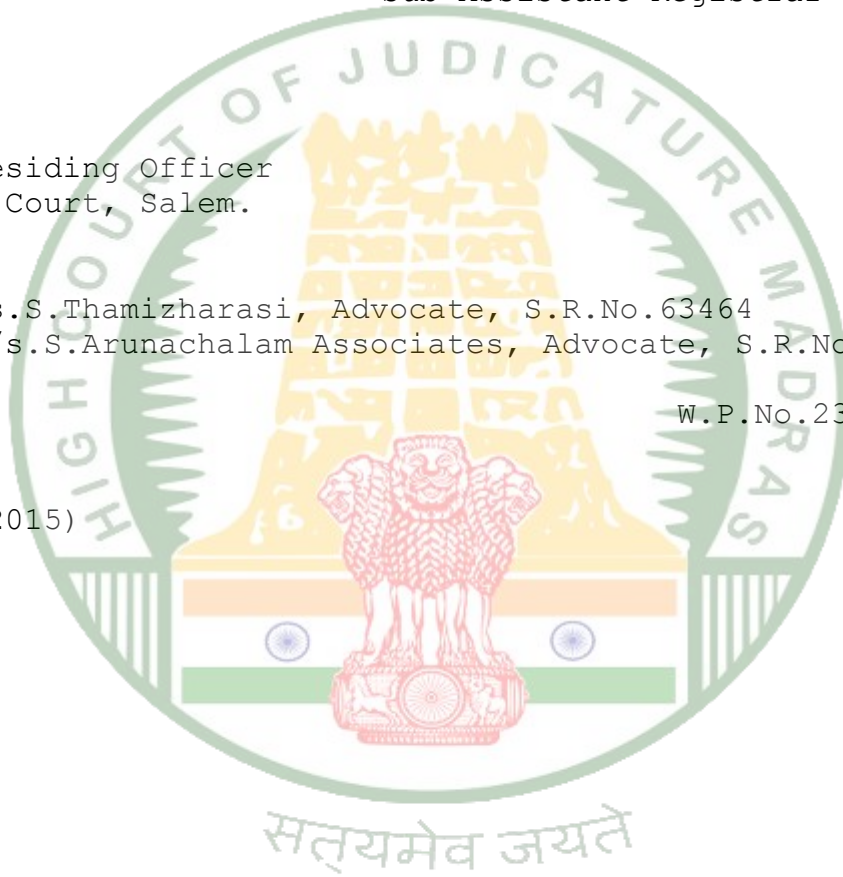
1. The Presiding Officer
Labour Court, Salem.

+1cc to Ms.S.Thamizharasi, Advocate, S.R.No.63464

+1cc to M/s.S.Arunachalam Associates, Advocate, S.R.No.63990

W.P.No.23555 of 2015

RSK(CO)
CA(09/12/2015)



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