

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Dated: 02..12..2016

Coram:

WEB COPY

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE

and

THE HON'BLE MR. JUSTICE S.NAGAMUTHU

Writ Appeal (MD) Nos.99 and 100 of 2015

W.A. (MD) No.99 of 2015

- 1.A.M.D.Leenus
- 2.E.Pascal Fernando
- 3.D.Balaji
- 4.E.Sahayam Fernando

... Appellants/petitioner**W.A. (MD) No.100 of 2015**

- 1.A.Raju Fernando
- 2.J.Elias

... Appellants/petitioner**-Versus-**

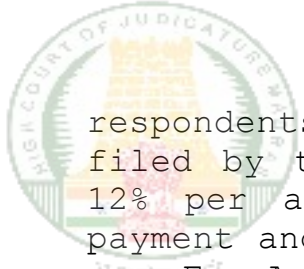
- 1.The Management of Tuticorin Stevedores Association (Labour Pool),
Administrative Body,
Rep. By its Secretary,
Tuticorin Stevedores Association,
Chevalier CI.R.Machado Plaza,
5A, World Trade Avenue,
Tuticorin.
- 2.The Management of Tuticorin Port Trust
Cargo Handling Labour Pool,
Tuticorin Port Trust,
(Now renamed as VOC Port Trust),
Tuticorin-628004.
- 3.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents/Respondents in both Writ Appeals

PRAYER: Writ appeal is filed under clause 15 of the letters Patent against the order dated 05.06.2014, made in W.P.(MD).Nos.9519 and 9520 of 2011.

Common Prayer in WP(MD)Nos.9519 and 9520 of 2011:

Writ Petitions are filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus to call for the records pertaining to the award in CP Nos.135 and 135 of 1992, dated 23.03.2005, on the file of the Labour Court, Tirunelveli and quash the same and direct the



respondents to pay the amount as claimed in the claim petition filed by the petitioners, together with interest at the rate of 12% per annum calculated from the date of claim till date of payment and to Award cost.

For Appellant(s) in both : Mr.S.Arunachalam

Writ Appeals

For Respondent(s) in both : Mr.A.L.Kannan for

Writ Appeals

Mr.S.Yashwanth for R1

Mr.G.R.Swaminathan

for Mr.A.Arivuchandran for R2

COMMON JUDGEMENT

[Judgement of the court was made by S.NAGAMUTHU.J.,]

These Writ Appeals have been filed challenging the common order made by the learned single Judge of this Court in W.P.(MD) No.9519 and 9520 of 2011.

2. The Writ Petitions came to be filed in the following circumstances:-

The appellants are all workers in the Tuticorin Port Trust. The Tuticorin Port Trust has been classified as small port. The appellants are also members of the 1st respondent - Trade Union. The said trade union entered into a settlement with the management under Section 12(3) of the Industrial Disputes Act, 1947 in the year 1983. As per the terms of the settlement, the workers were entitled to incentives for handling cargo in addition to their regular load. The incentive was fixed based on the basic wage of the shore worker. Subsequently, another settlement was arrived at on 11.04.1984 whereby the earlier settlement was revised, but the revised basic wage was decided not to be considered for fixing the incentives for cargo lifting. While so, another settlement was entered into on 12.06.1989 and though the incentive rates were revised, the revised basic rates were agreed not to be considered for calculating incentives. Aggrieved over the same, the appellants filed claim petitions under Section 33(c)(2) of the Industrial Disputes Act before the Labour Court. Initially those petitions were dismissed by the labour court as not maintainable. The same were challenged before this court and this court directed the labour court to entertain those claim petitions and decide the same on merits. Accordingly, the labour court went into the issues and dismissed the claim petitions on merits by a common award dated 23.03.2005. Challenging the same, the appellants filed the above two writ petitions. The learned single Judge of this Court by a common order dismissed both the writ petitions. As against the same, the present writ appeals have been filed.

3. We have heard the learned counsel for the appellants and the learned counsel for the respondents and we have also perused the records carefully.



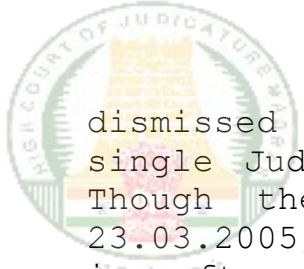
4. The learned counsel for the appellants would submit that the labour court as well as the learned single Judge of this court have failed to appreciate the facts. The wages for the normal work is being increased settlement after settlement. The payment of wages for the extra work alone cannot be continued at the same rate which was fixed several years ago by claiming that it should be constant one.

5. The learned counsel for the appellants would further pointed out that the parties never agreed to take the least basic wages of the shore worker as on 1984 and 1989 respectively for calculation and that the least basic wages as on 01.03.1983 became constant factor. There is no evidence before the 3rd respondent, according to the appellants, with regard to these findings. Therefore, according to the learned counsel for the appellants, the learned single Judge ought to have noted the same and held that the finding of the 3rd respondent is perverse. It is also contended by the learned counsel that in the settlement dated 08.06.1983 which has not stated that minimum back wages of the shore workers, which is the important factor to calculate the incentive payment, was constant one and hence, the finding of the 3rd respondent was a perverse one.

6. The learned counsel for the respondents would refute the above allegations. According to them, since there was no pre-determination of the incentives to be paid to each appellant for a period between 01.01.1984 and 31.03.1992 in money value, the computation petitions filed under Section 33(c)(2) of the Industrial Disputes Act, are not maintainable. It is also contended by them that though the original settlement was dated 08.06.1983 and though there were number of settlements arrived at later on, the appellants have chosen to file the writ petitions after a long number of years and thus the appellants are guilty of laches also because the awards made in these matters in the year 2005 were challenged only in the year 2011. The learned counsel for the respondents would also submit that the labour court was not competent to interfere with the awards.

7. We have considered the above submissions and we have also gone through the common order of the learned single Judge carefully.

8. At the outset, we should say that these writ appeals cannot be equated to civil appeals where the appellant court would be within its jurisdiction to appreciate the evidence and to test the correctness of the findings rendered by the court below. Unless it is shown to this court that the order of the learned single Judge is palpably wrong, it is not at all possible for this court to interfere with the said order of the learned single Judge. In the instant case, the learned single Judge has



dismissed the writ petitions on several grounds. The learned single Judge has held that the appellants are guilty of laches. Though the common award of the labour court was passed on 23.03.2005, the same was challenged only in the year 2011, that is, after six years. The learned counsel for the appellants would submit that the provisions of the Limitation Act are not applicable to writ proceedings. Of course, it is true. But, at the same time, we need to mention that there is a vast difference between the period of limitation prescribed under the statute and the principle of laches. In the instant case, the learned single Judge has relied on the judgement of the Hon'ble Supreme Court in **Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu, 2014 (10 LLN 559 (SC))** wherein the Hon'ble Supreme Court has elaborately dealt with the doctrine of laches and has held that as follows:

"The doctrine of delay and laches should not be lightly brushed aside and a writ court is required to weigh the explanation offered and the acceptability of the same. The Hon'ble Supreme Court has further held that a writ court is required to weigh the explanation offered and the acceptability of the same. The Hon'ble Supreme Court has gone further to say that the court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant a litigant who has forgotten the basic norms, namely, procrastination is the greatest thief of time and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

9. Applying the above-said ratio laid down by the Hon'ble Supreme Court to the instant case, the learned single Judge has held that the appellants are guilty of laches and as there has been no plausible explanation offered by the appellants for the delay. The learned single Judge has given sufficient reasons to



accept the contentions of the respondents that the appellants are guilty of laches and we find no reason to interfere with the same.

10. The learned single Judge has further held that after the settlement in the year 1983 there has been reached many more settlements and much water has flown under the bridge. We do not find any reason to take a different view. Thus, there is absolutely no merit in the writ appeals and the same deserve only to be dismissed.

11. In the result, The Writ Appeals are dismissed. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer, Labour Court, Tirunelveli.

+2 copies to M/s A.ARIVUCHANDRAN, ADVOCATE, SR, No.78801

nb

MS/10.01.2017/5P-4C

Writ Appeals(MD) Nos.99 and 100 of 2015
02.12.2016