

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 01.11.2017

Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P.No.23131 of 2006

C.Kasirajan

.. Petitioner

versus

1.The Management of Tamilnadu  
Civil Services Corporation,  
Dharmapuri Region,  
Dharmapuri.

2.The Presiding Officer,  
Labour Court, Salem.

... Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, for issuance of Certiorarified Mandamus, to call for the records connected with the award passed by the second respondent Labour Court, Salem made in I.D.No.657 of 2000 dated 16.11.2004, quash the same and also direct the Labour Court to adjudicate the issue on merits and in accordance with law.

For Petitioner: M/s.S.Girija

For Respondents: Mr.A.Arumugam for R1  
Mr.S.Gunasekaran, AGP for R2

ORDER

The writ petitioner herein, has approached this Court, seeking the following relief:

"To issue a Certiorarified Mandamus, to call for the records connected with the award passed by the second respondent Labour Court, Salem made in I.D.No.657 of 2000 dated 16.11.2004, quash the same and also direct the Labour Court to adjudicate the issue on merits and in accordance with law."

2.The case of the petitioner is as follows:

The petitioner joined the service of the first respondent Management as Trainee Sales Assistant at Dharmapuri District on 01.01.1978. While working as Sales Assistant, the petitioner

was issued with a charge memo dated 02.04.1981, for certain allegations that there was a shortage of cash and commodities. In response to the charge memo, an explanation was offered by the petitioner denying the charges. Notwithstanding the explanation, an enquiry was conducted into the charges and the enquiry report was also submitted holding that the charges were proved. On the basis of the findings of the departmental enquiry, the petitioner came to be discharged from service with effect from 20.10.1984. According to the petitioner, no proper opportunity was given to him in the departmental enquiry, neither the witnesses were examined nor any documents were marked in the enquiry. A copy of the enquiry report was also not furnished to him nor a show cause notice was issued against him before he came to be discharged from service. Thereafter, the petitioner seemed to have raised an additional dispute, after a lapse of several years, for which, no explanation was forthcoming and the Conciliation proceedings ended in failure in the year 1992 and a failure report was also submitted thereafter.

3. However, according to the petitioner, the failure report was not made available immediately and was given to him only on 12.10.2000 and thereafter a dispute was raised before the Labour Court, the second respondent herein and the same was taken on its file in I.D.No.657 of 2000. The Labour Court on consideration of the submissions and after appreciating the materials placed on record had dismissed the I.D. solely on the ground that the dispute was hit by latches/ delay. Having been aggrieved by the dismissal of I.D., the petitioner is before this Court assailing the award of the Labour Court, the second respondent herein.

4. Upon notice, Mr.A.Arumugam, learned counsel takes notice for the first respondent and Mr.S.Gunasekaran, learned Additional Government Pleader takes notice for the second respondent.

5. The learned counsel for the first respondent would submit that there was unexplained inordinary delay in approaching the Conciliation Officer from the date of discharge from service which had taken place as early as on 20.10.1984. Admittedly, the petitioner had raised the Industrial Dispute only in the year 1992 and approached the Labour Court only in the year 2000, 16 years after the discharge. Therefore, according to the learned counsel for the second respondent/ Labour Court, the Labour Court was correct in dismissing the I.D on the ground of latches/delay. Since the claim of the petitioner could not be appreciated with reference to the documents or evidence since for the reasons that the relevant documents/ materials were not available on the file of the first respondent/Management in view of passage of long years. In

the absence of the relevant documents / materials, the plea of the petitioner could not be verified or established and therefore an inordinary delay in approaching the Labour Court became fatal to the claim of the petitioner. In that view of the matter, the award of the Labour Court is not liable to be interfered with.

6. Per contra, the learned counsel for the petitioner would submit that the enquiry was not properly conducted in terms of the Rules and Regulations of the first respondent/Management and the order of discharge was therefore, not valid in law. The learned counsel would submit that neither the report of the enquiry officer was furnished nor any second show cause notice was issued to the petitioner as contemplated in the regulations. As far as the delay is concerned, the learned counsel would submit that the conciliation failure report was not made available to the petitioner and it was made available only in the year 2000 and she approached the Labour Court immediately. However, according to her, the Labour Court without appreciating the case on merits had dismissed the I.D. on the technical ground of delay/latches. According to her, such view of the Labour Court was against the very spirit and letter of the beneficial provisions of the Industrial Disputes Act. Therefore, the learned counsel would urge this Court to take pragmatic view in appreciating the claim of the petitioner.

7. This Court has given its anxious consideration to the rival submissions of the learned counsel and perused the available materials and pleadings placed on record. This Court, at the out set, does not find any infirmity in the order passed by the second respondent/Labour Court. Admittedly, according to the first respondent that any documents would be retained by them only for a period of 10 years and in the instant case, as the matter pertain to the period of 16 years before no documents were available and hence the claim of the petitioner could not be factually appreciated or verified or ascertained. Since the delay is entirely attributable to the petitioner and as such a stale claim preferred after so many years cannot be entertained by any Court or forum, even though no limitation period is prescribed in the Industrial Disputes Act. In the absence of documents/materials, the Labour Court was handicapped in pursuing the matter to its logical end. Therefore, the Labour Court after holding the inordinary delay against the petitioner has rightly dismissed the I.D., by the impugned award.

8. Even otherwise, this Court is of the view that there is no scope for examining the case of the petitioner as of today since no materials or witnesses would be available either in support or against the charges. In that view of the matter, this Court does not find as to how the plea of the petitioner can be

appreciated at this distance of time. Therefore, this Court has no other option except to confirm the award passed by the Labour Court dated 16.11.2004 in I.D.No.657 of 2000.

9. In view of the above conclusion, the writ petition is devoid of merits and substance, and therefore, the same is dismissed. No costs.

Sd/-  
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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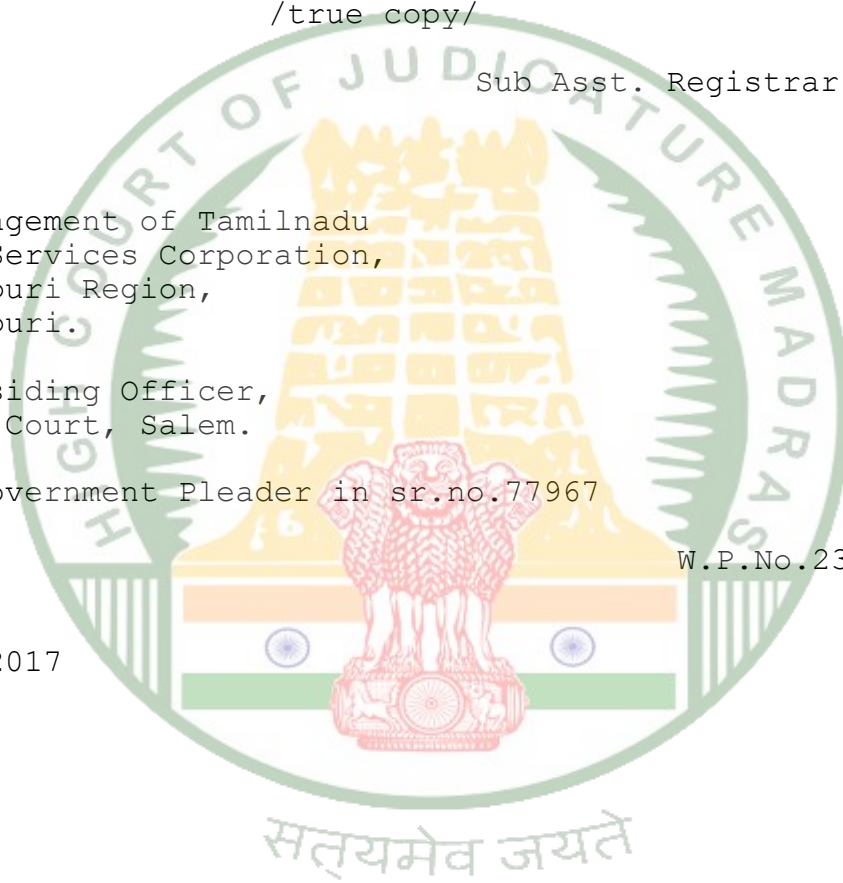
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2.The Presiding Officer,  
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+1cc to Government Pleader in sr.no.77967

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NR 11/12/2017



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