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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	21.01.2022
PRONOUNCED ON	27.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.Nos.2552 & 2553 of 2013

1. S.Deenadayalan ...Appellant in W.A.No.2552 of 2013
2. M.Vijayakumar ...Appellant in W.A.No.2553 of 2013

Vs.

1. The Assistant Executive Engineer,
TWAD Board Maintenance Division,
Arakonam.
2. The Executive Engineer,
TWAD Board,
Maintenance Division,
Gandhi Nagar,
Vellore - 632 006.
3. The Managing Director,
TWAD Board,
No.31, Kamarajar Salai,
Chennai - 600 005.
4. The Presiding Officer,
Labour Court,
Vellore.

...Respondents in both W.As

COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, praying to set aside the order passed by this Hon'ble Court in W.P.Nos.39808 of 2002 and 20709 of 2003 dated 20.09.2012 respectively.

W.P.No.39808 of 2002: Writ petition is filed under Article 226 of the Constitution of India praying for issuance of a writ or certiorari to call for the records in the impugned award made in I.D.No.11/99 dated 19.02.2002 on the file of the Labour Court, Vellore, the 2nd respondent and quash the same.

W.P.No.20709 of 2003: Writ Petition is filed under Article 226



of the Constitution of India praying for issuance of a writ of certiorari to call for the records in the impugned award dated 19.02.2002 made in I.D.No.12/1999 on the file of the Labour Court, Vellore 2nd respondent and quash the same.

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For Appellant in both W.As	:	M/s.Kamatchi for Mr.G.P.Arivuchudar for Law Square
For Respondents 1 to 3 in both W.As	:	Mr.G.Silambanan, Additional Advocate General Assisted by Ms. S.Shahila Banu
For Respondent 4 in both W.As	:	Labour Court

C O M M O N J U D G E M E N T

J.SATHYA NARAYANA PRASAD, J.

The Writ Appeal Nos.2552 of 2013 and 2553 of 2013 are directed against the common order passed by the learned Single Judge in W.P.Nos.39808 of 2002 and 20709 of 2003 dated 20.09.2012, allowing the Writ Petitions.

2.Heard the learned counsel on both sides and perused the materials placed before us.

3. The facts of the case in a nutshell are as follows:

S.Deenadayalan, appellant in W.A.No.2552 of 2013 and M.Vijayakumar, appellant in W.A.No.2553 of 2013 were appointed as casual labourers as per the proceedings of the first respondent dated 20.12.1989. The Appellants S.Deenadayalan and M.Vijayakumar joined the services on 01.06.1990, on temporary basis as N.M.R. The appellants viz., S.Deenadayalan and M.Vijayakumar were appointed by the first respondent as watchmen in Pannapakam and Ayarpadi respectively. Both the appellants were employed only on daily wage basis. However, after 10.06.1991, they have not even come back to work. It is an admitted fact that from 01.06.1990 to 10.05.1991, they have attended the work as daily wage employees. Further, admittedly both the appellants have worked only for 281 days. However, they were refused employment from 10.06.1991 and they raised the Industrial Disputes I.D.No.11 of 1999 and 12 of 1999 on the file of Labour Court, Vellore. The aforesaid Industrial Disputes were raised by the appellants only after a delay of seven years, however, they did not mention any valid reason for the said delay. The Labour Court, Vellore passed an award in I.D.Nos.11 of 1999 dated 19.02.2002 and I.D.No.12 of 1999 dated 19.02.2002

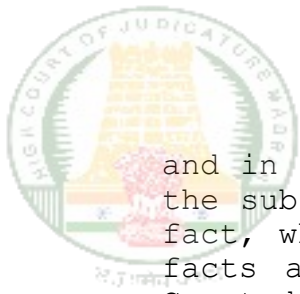


that the appellants should be reinstated by the respondents with continuity of service and other benefits within two months from the date of enforcement of the award and that the appellants are entitled for backwages from 20.07.1998. Subsequently, the respondents filed the Writ Petition Nos.39808 of 2002 and 20709 of 2003 challenging the award passed by the Labour Court in I.D.Nos.11 of 1999 and 12 of 1999 dated 19.02.2002.

4. On a perusal of the materials available on record, it is clear and evident that the Industrial Disputes was raised by the appellants after an inordinate delay of seven years. There is no valid or sufficient reason for the long delay in raising the Industrial Disputes, nor merit or bonafied in the petitions filed by the appellants. The reasons given by the appellants that they were genuinely and actively representing the matter by visiting the office of the respondents from the date they were orally terminated, namely, 23.07.1992 and in any event when the Labour Court in its discretion condoned the delay and directed the reinstatement of the appellants, is absolutely unsustainable and untenable. The Apex Court in the case of Haryana Land Reclamation and Development Corporation Ltd., Vs. Nirmal Kumar reported in 2008 AIR SCW 306, held that the delay of seven years will be fatal and disentitle the workmen to get any relief. Similarly, in Ratan Chandra Sammanta Vs. Union of India (1993 Supp (4) SCC 67), the Apex Court again held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right to challenge his termination.

5. One of the contentions of the appellants is that in similar circumstances the very same respondents, after receiving an identical order for reinstatement, implemented the same. Therefore, in the present case, the respondents cannot challenge the order/award of reinstatement passed by the Labour Court, Vellore by filing the Writ Petitions which are the subject matter of the Writ Appeals.

6. It can be seen that the Labour Court also, in a routine manner, proceeded in holding that the Limitation Act was not applicable to the Industrial Disputes Act. On that wrong basis, allowed the stale claim directing the respondents to reinstate the appellants into the service. This approach in allowing the stale claim after a delay of more than seven years in raising the Industrial Disputes was deprecated by the Apex Court in Nedungadi Bank Ltd., Vs. K.P.Madhavankutty and others (AIR 2000 SC. 838 : 2000 AIR SCW 397), wherein it was held that law does not prescribe any time limit for the appropriate Government to exercise its powers under section 10 of the Act. Therefore, it does not mean that this power can be exercised at any point of time. The power of Labour Court is to be exercised reasonably



and in a rational manner. A dispute which is stale could not be the subject matter or reference under section 10 of the Act. In fact, when a dispute can be said to be stale would depend on the facts and circumstances of each case. Further, when the Apex Court has held that a delay of seven years was fatal to the claim and thereby disentitles the workman to any relief, Labour Court should not have entertained their stale claim hopelessly barren by time of seven years. Moreover, as mentioned above, when the respondents have not even mentioned any reason for the delay of seven years, directing reinstatement and thereby reviving their stale claims, are absolutely unwarranted.

7.This view is further supported by the judgment of the Apex Court in Shalimar Works Ltd., Vs. Workmen {(1960) 1 SCR 150}, wherein it was held that merely because the industrial disputes Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefore and on that basis, when it is held therein that a delay of even four years in raising the dispute is fatal, in view of the ratio laid down by the Apex Court as stated above, the claim petitions filed by the Appellants herein, after a lapse of seven years is liable to be dismissed.

8.Considering the facts and circumstances of the cases we do not find any ground to interfere with the orders passed by the learned Single Judge in W.P.Nos.39808 of 2002 and 20709 of 2003. The Writ Appeals are devoid of merits and the same are liable to be dismissed.

9.Accordingly, both the Writ Appeals are dismissed and the orders passed by the learned Single Judge in W.P.Nos.39808 of 2002 and 20709 of 2003 dated 20.09.2012 are confirmed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

(vm)

To:

1. The Assistant Executive Engineer,
TWAD Board Maintenance Division,
Arakonam.



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2. The Executive Engineer,
TWAD Board,
Maintenance Division,
Gandhi Nagar,
Vellore - 632 006.

3. The Managing Director,
TWAD Board,
No.31, Kamarajar Salai,
Chennai - 600 005.

4. The Presiding Officer,
Labour Court,
Vellore.

+2cc to M/s.Law Square, Advocate, S.R.No.5395, 5394

W.A.Nos.2552 & 2553 of 2013

MT (CO)
RGA (09/02/2022)