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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.12827 OF 2022

AND

W.M.P.NO.12296 OF 2022

The Management,
The Tamil Nadu State Transport
Corporation (vpm) Ltd.,
Kancheepuram Region,
Ponnerikarai, Bangalore High Ways,
Kancheepuram - 631 552.

... Petitioner

.Vs.

The General Secretary,
M.G.R.Transport Employees Union,
Rep. by Thiru Ravi,
No.5, Kuks Salai,
Chennai - 600 012.

... Respondent

PRAYER:-

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the order passed in I.D.No.92 of 2009 dated 25.08.2012 on the file of the II Additional Labour Court, Chennai and quash the same.

For Petitioner : Mr.T.Chandrasekaran

For Respondents : Mr.T.Arun Kumar
Additional Government Pleader

O R D E R

According to the petitioner, the petitioner Management had issued a show cause notice dated 20.10.1993 to the respondent stating that the respondent has to pass Tamil Language test within a period of two years from the date of his appointment, otherwise he will be terminated from service without any prior



intimation. Again on 23.7.1997, a show cause notice was issued to the respondent calling for explanations as to why the petitioner should not be discharged from service and since there was no positive reply, he was discharged from service by order dated 6.10.1997 and the petitioner was subsequently, terminated from service on 6.10.1997. Thereafter, he passed Tamil test in 1998 and the respondent was reinstated in service. However, the respondent was reappointed as fresh employee. The petitioner Management has not taken into account the service as continuous service. Therefore, the respondent Union has raised Industrial Dispute and the same was referred to the II Additional Labour Court, Chennai. The II Additional Labour Court, Chennai has passed an award in I.D.No.92 of 2009 dated 25.8.2012 directing the petitioner Management to give continuity of service to the respondent. Aggrieved by the same, the Management of the Transport Corporation has preferred the present writ petition wherein the Management raised various grounds to assail the impugned award.

2. The learned counsel appearing for the respondent strongly objected by stating that the award was passed in the year 2012, now, after the lapse of 10 years, the Management has filed the present writ petition and therefore, the writ petition is liable to be dismissed on the ground of delay.

3. Heard the rival submissions of the parties and perused the materials available on record.

4. On perusal of the impugned award passed by the II Additional Labour Court, Chennai shows that the award has been passed in the year 2012, however, the same has been challenged before this Court after a lapse of 10 years. The petitioner Management has not stated any satisfactory explanation for inordinate delay in approaching the Court.

5. At this juncture, it is useful to refer to the judgments of the Hon'ble Apex Court and the Hon'ble Division Bench of this Court. The Hon'ble Apex Court, in a case, reported in 1994 SCC, Supl.(2) 195 [Ex-Capt. Harish Uppal vs. Union of India), has held as follows:

''8. The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition



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suffers from laches. It is not the only consideration.

It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of Constitution of India and that is what precisely the Delhi-High Court has done. We cannot say that the High Court was not entitled to say so in its discretion."

6. The Hon'ble Division Bench of this Court, in the case of S.Vaidhyanathan Vs.Government of Tamil Nadu reported in 2018 SCC OnLine, in para 14, it is held as under ;

"14. There is an inordinate delay and laches on the part of the appellant. What is laches is as follows:

"Laches or reasonable time are not defined under any statute or Rules. "Laches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the laches in one case might not constitute in another. The laches to non-suit, an aggrieved person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case."

In para 16 of the judgment cited supra, it is held as under;

16. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving



of the remedy, is a principle based on public policy and utility and not equity alone....."

7. In Karnataka Power Corpn. Ltd. v. K.Thangappan reported in (2006) 4 SCC 322, the Hon'ble Supreme Court, at Paragraph 6, held as follows:

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party'.....

16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time Delay and laches are relevant factors for exercise of equitable jurisdiction.''

8. In Chennai Metropolitan Water Supply and Sewerage Board v. T.T.Murali Babu reported in (2014) 4 SCC 108, at Paragraphs 16 and 17, the Hon'ble Supreme Court held as follows:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional



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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 scrutinise 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. Keeping in mind the ratio laid down in the above cited decisions, this Court is of the view that the present writ petition is liable to be dismissed on the ground of delay and laches.

10. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

+1cc to Mr.T.Chandrasekaran, Advocate, S.R.No.32476
+1cc to the Government Pleader, S.R.No.33126

W.P.NO.12827 OF 2022

SJ(CO)
PBS/17/06/2022