



W.P.No.68 of 2016 and
W.M.P.No.36 of 2016

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.12.2022

CORAM

THE HONOURABLE Mr.JUSTICE M.S.RAMESH

W.P.No.68 of 2016
and
W.M.P.No.36 of 2016

E.D.869-A, Aandikuttai Milk Producers
Co-operative Society,
Rep.by its President Mr.K.Lakshmanan,
Oilpatti Post,
Rasipuram Taluk,
Namakkal District – 636 202.

... Petitioner

Vs

1.The Labour Court,
Salem.

2.D. Subramaniam

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the Award of the 1st respondent dated 16.03.2015 in I.D.No.232 of 2010 and quash the same.



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For Petitioner : Mr.S.Indrajith

For Respondent : No Appearance for R2

ORDER

Heard Mr.S.Indrajith, the learned counsel for the petitioner. Though, the name of the second respondent is printed in the cause list, none appears on his behalf.

2. On the basis of certain lapses alleged, charge memo dated 30.12.1992 was issued to the effect that the petitioner unauthorisedly absented himself between 18.09.1992 to 21.11.1992. It came to light that a criminal case was registered against him and he was arrested in connection with the criminal case. The enquiry officer through his report dated 05.10.1993 had held all the charges to be proved. Thereafter, the petitioner / Management had issued a second show cause notice, calling for the explanation of the second respondent. Not being satisfied with the explanation dated 04.11.1993, he was terminated from the services on



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17.11.1993. After 17 years from the punishment, the second respondent had preferred an Industrial Dispute on 28.09.2010 in I.D.No.232 of 2010 before the Labour Court, Salem.

3. Before the Labour Court, the Management had predominantly raised the grounds of delay and laches on the part of the second respondent in raising the Industrial Dispute. The Labour Court however, had gone into the validity of the domestic enquiry and there was absolutely no discussion on the grounds of delay and laches. The only reasoning adopted by the Labour Court is that the Management had not established the charges against the second respondent herein and a mere stress on the ground of delay alone, is unacceptable. I am unable to comprehend as to how the Labour Court failed to take note of an inordinate delay of 17 years on the part of the second respondent in raising the Industrial Dispute.

4. The Industrial Dispute came to be raised on 28.09.2010. By



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that time, Section 2(A) of the Industrial Disputes Act came to be amended through Act 24/2010, with effect from 15.09.2010 whereby, Sub Section 3 was inserted, imposing a limitation of three years to file an application under Sub Section 2 before the Labour Court or the Industrial Tribunal. There is nothing on record to show that this limitation point of three years was considered by the Labour Court.

5. When the Management had raised the ground of limitation as a foremost ground in their counter affidavit, as well as during the course of arguments before the Labour Court, a duty is cast on the Labour Court to have addressed this issue and given its reason for having condoned such a delay. It is needless to point out that the dispute itself, at that relevant point of time, was not maintainable after the expiry of the limitation under Section 2(A)(3).

6. The Hon'ble Supreme Court in the case of ***Prabhakar Vs. Joint Director, Sericulture Department & Another*** reported in **2015 (4)**



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LLN 16, had addressed the seriousness of the delay and laches in an industrial dispute. The relevant portion of the order reads as follows:-

“37.It is now a well recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases Courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity “delay defeats equities”.

38. This principle is applied in those cases where discretionary order of the Court are claimed, such as specific performance, permanent or temporary injunction, appointment of receiver etc. These principles are also applied in the writ petitions filed under Article 32 and 226 of Constitution of India. In such cases, Courts can still refuse relief where the delay on the petitioner's part has prejudiced the respondent even though the petitioner might have come to Court within



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the period prescribed by the Limitation Act.



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39. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong.

40. Thus, in those cases where period of limitation is prescribed within which the action is to be brought before the Court, if the action is not brought within that prescribed period the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over. Likewise, in other cases even where no limitation is prescribed, but for a long period the aggrieved party does not approach the machinery provided under the law for redressal of his grievance, it can be presumed that relief can be denied on the ground of unexplained delay and laches and/or on the presumption that such person has waived his right or acquiesced into the act of other. As mentioned above,



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these principles as part of equity are based on principles relatable to sound public policy that if a person does not exercise his right for a long time then such a right is non-existent.”

7. In the absence of any finding with regard to the inordinate delay on the part of the second respondent in having raised the Industrial Dispute, this Court is of the view that the Award of reinstatement, together with the benefits, cannot be sustained. Accordingly, the impugned Award passed in I.D.No.232 of 2010 dated 28.09.2010 on the file of the Labour Court, Salem is quashed. The Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

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AT
Index:Yes/No
Speaking/Non Speaking Order



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M.S.RAMESH,J.

AT

To
1.The Labour Court,
Salem.

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