IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.6535 of 2018
and
W.M.P.No.8127 of 2018

The Management of
Caterpillar India Private Limited,
Manavalnallur Village,
Melnallathur,
Thiruvallur – 602 004.
Represented by its Director ... Petitioner

Vs.

1. The Presiding Officer,
Industrial Tribunal, Tamil Nadu,
Chennai – 600 104.

2.Caterpillar India Pvt. Ltd., Workers Union,
Rep. by General Secretary,
Melnallathur,
Thiruvallur – 602 004.
Registration No.CPT 414 ...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorari calling for the records of the 1st respondent in I.D.No.2 of 2013, quash the award dated 24.10.2017.

For Petitioner	:	Mr.G.Anand for M/s.T.S.Gopalan & Co.
For Respondents	:	Tribunal [R1] Mr.K.Ramesh, SC for M/s.M.Karthikeyani [R2]

O R D E R

This writ petition has been filed seeking for issuance of a writ of certiorari to quash the Award dated 24.10.2017 passed by the 1st respondent in I.D.No.2 of 2013.

2. It is the case of the petitioner that it is a multinational company and in the year 2001, it acquired a Division of Hindustan Motors, which was into manufacture of Earth Moving Equipment and upon such acquisition, the employees of the said Division were absorbed with continuity of service. It is the further case of the petitioner that prior to the take over, the employees were given certain incentives based on the service of employees, which was stopped in the year 2000 even before the petitioner took over the factory. After the petitioner taking over the factory, settlement was entered into between the petitioner and the 2nd respondent Union. As the petitioner, on the basis of its global practice, was in the habit of giving gold coins to its employees based on the

service rendered, however, in the year 2008, the 2nd respondent raised a dispute that the said system of giving gold coins should be based on the service of the workmen when the factory was managed by the erstwhile Hindustan Motors. Inspite of raising the dispute, the 2nd respondent had entered into and signed the settlement with the petitioner. However, in the year 2013, the dispute was referred to the 1st respondent and the 1st respondent has passed the present order, challenging which the present petition has been filed.

3. Learned counsel appearing for the petitioner submits that though the 2nd respondent Union raised a dispute in the year 2008 seeking that gold coins should also be given to its workmen based on the service rendered by them in the erstwhile establishment, which was pending conciliation, however, leaving aside the said dispute, the 2nd respondent Union had entered into a settlement u/s 12 (3) of the Industrial Disputes Act was entered into between the petitioner and the 2nd respondent. Therefore, on and from the said date of settlement, the benefits to the employees stood governed only through the settlement and, therefore, the dispute raised earlier in point of time, cannot be referred to the Tribunal

in the year 2013, as the settlement would nullify the earlier dispute. Further, pending the dispute, the 2nd respondent having entered into the settlement and had not diligently prosecuted the conciliation proceedings, it is deemed that the dispute is non-existent after entering into a settlement. However, without appreciating the same, the Tribunal has passed the order in favour of the 2nd respondent, which reveals non-application of mind and, therefore, the same requires to be interfered with.

4. Learned counsel appearing for the petitioner placed reliance on the following decisions :-

> i) Haryana State Coop. Land Development Bank - Vs - Neelam (2005 (5) SCC 91);
>
> ii) Krishi Utpadan Mandi Samity - Vs - Pahal Singh (2007 (12) SCC 193); and
>
> Prabhakar - Vs - Joint Director, Sericulture Department & Anr. (2015 (15) SCC 1)

5. Per contra, learned senior counsel appearing for the workmen submitted that mere entering into settlement u/s 12 (3) would not negate

the dispute which has already been raised and which is pending conciliation. The said dispute having not been resolved, the dispute was referred to the Tribunal, which, rightly appreciating the provisions of the Industrial Disputes Act, had held in favour of the workmen, which does not require any interference.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record, as also the decisions relied on behalf of the petitioner.

7. The facts in the present case are not in dispute. The whole dispute revolves around the dispute raised by the 2nd respondent in the year 2008, pending which the settlement u/s 12 (3) has been entered into by the 2nd respondent with the petitioner. Therefore, the gravemen of the contention on behalf of the petitioner is that the 2nd respondent having entered into a settlement u/s 12 (3) in the year 2010 pending the dispute, which dates back to 2008, the settlement would be binding on all the parties and the 2nd respondent cannot have the benefits of the settlement

as well as seek resolution of the dispute, more so, when for almost five years, the 2nd respondent had not taken any diligent steps to get ahead with the conciliation proceedings.

8. There can be no quarrel with the fact that the dispute was raised by the 2nd respondent in the year 2008. However, pending the dispute, on 16.4.2010, settlement u/s 12 (3) was entered into between the petitioner and the 2nd respondent. A settlement arrived at u/s 12 (3), by even a singular interpretation of the aforesaid provision shows that pending any dispute, a settlement arrived at would be a settlement covering the said dispute as the said settlement could be arrived at u/s 12 (3) only in the midst of conciliation proceedings.

9. The relevant portion of the settlement, which had been entered into between the petitioner and the 2nd respondent, is quoted hereunder for better appreciation :-

> *4.19. This settlement supersedes all previous settlements, minutes, understanding and practices not so specifically expressed/agreed under this agreement.*
>
> *5.19. The various increases in emoluments under this Settlement have been agreed to by the Company on*

the clear understanding that for the period ended 31st May 2006, it has discharged all its obligations statutory, contractual or otherwise towards its workmen and no claim in respect of any workmen for the period till 31st May 2006 shall survive.

20. In consideration of the above the Union agrees for itself and on behalf of its members that it shall drop all other demands raised in the COD dated 20th May 2009.

10. In the case on hand, the dispute was raised in the year 2008 and a settlement u/s 12 (3) was entered into on 16.4.2010. Once a settlement is arrived at u/s 12 (3), the conciliation officer ought to have sent his report to the government along with the memorandum of the settlement signed by the parties to the dispute. In the case on hand, the settlement having been entered into between the petitioner and the 2nd respondent, the conciliation officer ought to have sent his report along with the settlement and such being the case, the dispute would be deemed to have been settled and there could be no further adjudication of the very same dispute upon it being referred.

11. Further, it is also to be pointed out that the dispute was raised

in the year 2008, but has been referred for adjudication only in the year 2013. Pending the same, the settlement u/s 12 (3) has been arrived at. Between 2008 and 2013, no steps have been taken by the 2nd respondent to get ahead with the conciliation proceedings. In this backdrop, the decision of the Apex Court in *Prabhakar case (supra)* assumes significance, wherein, the Apex Court held thus :-

> *38. 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 any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities".*

12. Therefore, the non-prosecution of the dispute diligently by the 2nd respondent coupled with the fact that a settlement u/s 12 (3) had already been entered into between the petitioner and the 2nd respondent,

the reference of the dispute itself is erroneous. The said aspect has not been properly considered by the Tribunal, while adjudicating the dispute resulting in an erroneous award being passed. The said award, being erroneous and perverse, the same requires to be interfered with.

13. For the reasons aforesaid, the writ petition deserves to be allowed and, accordingly, the same is allowed and the award dated 24.10.2017 passed by the first respondent in I.D.No.2 of 2013 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

11.09.2023

Index : Yes/No
Speaking order / Non-speaking order
NCC : Yes/No
rap

To

The Presiding Officer,
Industrial Tribunal,
Chennai – 600 104.

M.DHANDAPANI, J.

rap

W.P. No.6535 of 2018

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