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W.P.Nos.26973 & 31868 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.26973 & 31868 of 2017

and

W.M.P.Nos.28772 & 35016 of 2017

The Management,
Vellankovil Primary Agricultural
Cooperative Credit Society Ltd., No.2283,
Rep. by the President,
Vellankoil – 638 054,
Gobichettipalayam Taluk,
Erode District.

... Petitioner in both WPs

Vs.

1.V.M.Padma

2.M.Vasanth (Retd),
Special Officer,
Villankovil Primary Agricultural
Cooperative Credit Society Ltd., No.2283,
Vellankoil – 638 054,
Gobichettipalayam Taluk,
Erode District.

3.The Presiding Officer,
Labour Court, Salem.

... Respondents in W.P.No.26973 of 2017



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1.The President,
Socialist Employees Union,
1, Sarojini Street, No.1,
Sithaputhur,
Coimbatore – 44.

2.K.A.Kadhiravan

3.The Presiding Officer,
Labour Court, Salem.

4.V.M.Padma ... Respondents in W.P.No.31868
of 2017

[R4 in W.P.No.31868 of 2017 impleaded vide order dated
13.04.2023 made in W.M.P.No.14293 of 2021 in
W.P.No.31868 of 2017]

Prayer in W.P.No.26973 of 2017 : Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 12.07.2017 made in Complaint Nos.1 and 2 of 2006 and Complaint No.3 of 2007 in I.D.No.613 of 2004 passed by the 1st respondent, quash the same.

Prayer in W.P.No.31868 of 2017 : Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Certiorari, calling for the records relating to the impugned award dated 12.07.2017 made in I.D.No.613 of 2004 passed by the 3rd respondent, quash the same.

For Petitioner in both WPs	: Mr.N.Manokaran
For R1 in W.P.No.26973 of 2017	: Mr.J.Titus Knock
For R1 in W.P.No.31868 of 2017	: Deceased



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For R2 in both WPs

: Mr.C.Selvaraj

For R4 in W.P.No.31868 of 2017

: Mr.J.Titus Knock

COMMON ORDER

Since the issue involved in both the writ petitions are one and the same, with the consent of the learned counsel for the parties, both the writ petitions were heard together and disposed of by this common order.

2. For brevity, the petitioner in both the writ petition is hereinafter referred to as petitioner society and V.M.Padma/the first respondent in W.P.No.26973 of 2017 is hereinafter referred to as workman.

3. It is the case of the petitioner that the workman joined the petitioner society as a saleswoman on 8.7.1979 and after completion of 15 years, she was given the post of clerk on 24.01.1994. It is the further case of the petitioner that vide G.O. Ms. No.131 dated 4.6.1999, settlement u/s 18 (1) was entered into between the petitioner and the workmen, including the said Padma, which was signed on 29.6.1999. The 2nd respondent was appointed as senior assistant on 31.01.1998



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pursuant to the leaving of one of the senior assistant, who had abandoned his service. However, the workman had not objected to nor questioned the said appointment to the post of senior assistant between 31.01.1998 and 01.10.2004 and, in fact, she had not claimed promotion to the post of senior assistant during the said period.

3.1. It is the further case of the petitioner that based on the request of the 1st respondent Union the workman was accommodated in the post of clerk on the basis of seniority, though she was not entitled for the said post, as there was no scope for giving promotion to the post of Junior Assistant/Clerk from the post of Salesman as per Circular Na.Ka. No.119653/97 dated 8.12.1997.

3.2. It is the further case of the petitioner that having kept silent from 31.01.1998 to 1.10.2004, out of blue, the workman raised a dispute in I.D. No.613/2004 through the 1st respondent pursuant to the failure report dated 12.12.2003, in which the petitioner society entered appearance and filed counter denying the claim of the workman.



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3.3. It is the further case of the petitioner that pending ID No.613/2004, in view of the resignation submitted by one salesman, additional charge was given to the workman on 8.7.2006. However, the said workman refused to take charge and did not report for duty on 10.07.2006 and a medical leave letter for 10.7.2006 to 19.7.2006 was submitted by the workman, but she did not report for duty on 20.7.2006, but a letter was received on 24.7.2006 for medical leave. The workman went on leave from 1.8.2006 to 10.08.2006 and she came to office on 12.8.2006 and signed the attendance register and left the society and on 13.8.2006, a letter was received from the workman submitting that she was orally terminated on 12.8.2006, which was denied by the society vide its reply and asked the workman to join on 30.8.2006. However, a letter was sent by the workman as if she was not permitted to join duty on 31.8.2006, which was also denied by the society by letter dated 8.9.2006 and further informing her that failing joining, disciplinary action would be initiated against the workman.



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3.4. It is the further case of the petitioner that pursuant to the said letter, three complaints u/s 33 (A) of the Industrial Disputes Act were raised by the workman, which were opposed by the petitioner society. However, the Labour Court, without appreciating the objection raised by the petitioner society, clubbed the three complaints along with ID No.613/2004 for enquiry.

3.5. During the enquiry, the workman examined herself as P.W.1 and marked Exs.P-1 to P-36 while the petitioner society examined R.W.s 1 and 2 and marked Exs.R-1 to R-11 and by the award dated 12.07.2017, ID No.613/2004 as also the Complaint Nos.1 to 3/2006 were allowed as prayed for. It is the case of the petitioner society that the workman is not eligible to be promoted as senior assistant as per the non-existing cadre strength from 24.01.1997, which has been ordered by the Labour Court and further she is also not eligible to be appointed as Assistant Secretary. It is further submitted that the orders in the three complaints in favour of the workman is also perverse.



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3.6. It is the further submission of the learned counsel that against the said orders in the complaint, the petitioner society filed W.P. No.26973/2017 in which an order of stay has been granted. Aggrieved by the award passed by the Labour Court in ID No.613/2004, W.P. No.31868/2017 has been filed.

4. Learned counsel appearing for the petitioner society, at the outset submitted that the relief available to the workman is to resort to the statutory remedy available u/s 153 of the Tamil Nadu Civil Supplies Act, 1983 and without resorting to the said remedy, raising an industrial dispute is impermissible.

4.1. It is the further submission of the learned counsel that there is no explanation with regard to the delay between 31.01.1998 to 01.10.2004, of almost 6 1/2 years, when the workman has not taken any steps to seek the post of Senior Assistant, inspite of the fact that the workman is a signatory to the settlement u/s 18 (1) dated 29.06.1999. It is the further submission of the learned counsel that inspite of the fact



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that the post of senior assistant was filled on 31.01.1998, the workman had entered into the settlement on 29.06.1999, without raising any demur or objection and, in fact, had not raised any claim till 01.10.2004, for almost 6 1/2 years and the delay in not making any claim nor making any objection has been explained and the said delay is fatal to the claim made by the workman.

4.2. In addition to the above submission, learned counsel appearing for the petitioner society submitted that in the absence of cadre strength and also the qualification with regard to the workman, the claim for the said post is wholly illegal and the order of the Labour Court allowing the claim in favour of the workman is perverse, unreasonable and unsustainable and, accordingly, prayed for allowing the present petitions.

4.3. In support of the aforesaid submission, learned counsel appearing for the petitioner society relied upon the decision of the Apex Court reported in *(2015) 15 SCC 1*).



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5. Per contra, learned counsel appearing for the workman submitted that the Labour Court, through a well reasoned order, had allowed the claim of the workman to the post of Senior Assistant as also the complaints for further promotion as Assistant Secretary, which are based on oral and documentary evidence, by properly appreciating the documents filed by the workman and mere delay in preferring the dispute alone cannot be a bar to negate the claim of the workman. Therefore, he submits that no interference is called for with the order passed by the Labour Court.

6. The facts in the present case is not in dispute. Admittedly, the workman entered the service as Saleswoman in the year 1979 and considering the length of service rendered by her, she was given the post of Clerk in the year 1994. In the year 1998, the post of Senior Assistant fell vacant on the ground that one existing candidate D.Maria Joseph abandoned his service, in which, the workman claims that she is entitled to be appointed to the post. However, there was a direct recruitment and



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the same was filled up with the second respondent in W.P.No.31868 of 2017. Aggrieved by the same, the union raised a dispute before the conciliation officer, pursuant to the failure report, the State Government referred the dispute in the year 2004 vide G.O.(D).No.1156 dated 03.09.2004. Though the workman claims to be entitled for the promotional post, since she worked in the post of Clerk, which is the feeder cadre of next level of promotion of Senior Assistant, however, she was overlooked and given appointment to the second respondent in W.P.No.31868 of 2017. The Union raised a dispute in the year 2004 after a lapse of six years.

7. Prior to raising the dispute, a settlement u/s 18(1) was entered into on 29.06.1999 as per G.O.No.131 dated 04.06.1999 with regard to wage revision and the workman also accepted the 18(1) settlement in the year 1999. At the relevant point of time, no dispute was raised either before the appropriate authority or before the conciliation officer. However, they chosen to raise a dispute before the Conciliation Officer only in the year 2003 and thereafter, the G.O. was passed.



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8. In the present case, the workman herself retired from service in the year 2019 and it appears all the benefits were settled in favour of the workman except earned leave and the same was also not disputed by the workman. However, the grievance of the workman is that, if the notional promotion is granted in her favour, she is entitled to claim some monetary benefits. Admittedly, the workman has not officially enjoyed the post from 1998 onwards though the award was passed in the year 2017.

9. In this background, the claim of the workman to the said post has to be considered on the preliminary issue of delay raised on behalf of the petitioner society in which reliance has been placed on the decision reported in **(2015) 15 SCC 1**, wherein the Apex Court held as follows :-

"37. Let us examine the matter from another aspect, viz. laches and delays and acquiescence.

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



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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".

39. *This principle is applied in those cases where discretionary orders 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 Articles 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 the period prescribed by the Limitation Act.*

40. *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.*

41. *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, 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.*

42. *On the basis of aforesaid discussion, we summarise the legal position as under:*



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42.1. *An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute.*

42.2. *Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist.*

42.3. *Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the*



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workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as “dead”, then it would be non-existent dispute which cannot be referred.

42.4. Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as “dead”, then it would be non-existent dispute which cannot be referred.

42.5. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum.

42.6. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right



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or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted.

43. We may hasten to clarify that in those cases where the Court finds that dispute still existed, though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement. We are of the opinion that the law on this issue has to be applied in the aforesaid perspective in such matters.

44. To summarise, although there is no limitation prescribed under the Act for making a reference under Section 10(1) of the Act, yet it is for the 'appropriate Government' to consider whether it is expedient or not to make the reference. The words 'at any time' used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry."

10. A perusal of the above said decision makes it clear that, though the Industrial Disputes Act prior to 2010 did not prescribe any period of limitation and it gives right to the workman to raise dispute even



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belatedly, however, if the dispute is raised after a long period, the Court has to see as to whether the said dispute is still existing. The delay in raising the dispute is also a relevant consideration while considering the dispute.

11. In the present case, admittedly, the second respondent in W.P.No.31868 of 2017 was given promotion to the post of Senior Assistant in the year 1998 and the workman claims that she agitated the issue before the appropriate authority as well as the conciliation officer. This Court perused Exs.P-5 to P-11, submitted by the workman, which reveals that the said documents are only xerox copies without any acknowledgement card. Subsequently, in the year 2003, she raised dispute before the conciliation officer, thereby, the Government passed a G.O. in the year 2004. The post was filled up as early as in the year 1998, even prior to the settlement u/s 18 (1), to which the workman is also a party. However, no claim was made even at the time when the settlement was entered into. However, after a period of five years from the date of filling up of the post and after four years from the date of the



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settlement, the dispute has been raised. However, there is no explanation submitted by the workman with regard to the delay except that she claims that she made claim before the appropriate authority, but the said claim is not backed by materials, which are acceptable. There is no material to suggest that such claim was received by the petitioner society, except for certain xerox copies of certain documents, which has no acknowledgement from the petitioner society. Therefore, there is no explanation for the delay on the part of the workman in raising the dispute, which definitely hits at the substratum of the case of the workman.

12. In this backdrop, the decision of the Apex Court reported in *(2015) 15 SCC 1*), squarely becomes applicable to the case on hand and the delay in the present case definitely makes the claim a non-existing dispute, which ought to have been considered properly by the Labour Court. But for writing an elaborate order, the crux of the issue has not been addressed by the Labour Court, which makes the order perverse, unreasonable and unsustainable and deserves to be interfered with.



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13. Further, the workman who was employed as Clerk at the relevant point of time was given additional charge of Saleswoman. However, the additional charge of saleswoman no remuneration has been paid to the workman. For the a workman given additional charge, the additional charge carries additional pay, but no pay has been paid, but the workman is alleged to have been terminated from service. But it is admitted that additional charge has been given to the workman. Such being the case, definitely, the said workman is entitled to get additional remuneration towards the additional charge. Therefore, to that extent Complaint No.2 deserves to be allowed and this Court feels that a lumpsum amount of compensation could be awarded to the workman. However, complaint Nos.1 and 3, being connected with the main dispute, deserves to be rejected and, accordingly, the said complaints are rejected. In view of the reason aforesaid, this Court feels that in the interest of justice, in lieu of ordering reinstatement with some backwages, considering that the workman has already attained the age of superannuation, the petitioner is directed to pay a lumpsum compensation



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of Rs.2 lakhs to the workman which would meet the ends of justice.

14. Hence, the petitioner society is directed to settle the benefits which was not already settled in favour of the workman including encashment of leave and further, the petitioner society is directed to pay the compensation of Rs.2 lakhs with an interest at the rate of 6% from the date of award till the date of deposit to the workman within a period of four weeks from the date of receipt of a copy of this order.

15. In the result, W.P.No.26973 of 2017 is dismissed and W.P.No.31868 of 2017 is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

27.09.2023

Index :Yes/No
Internet:Yes/No
NCC : Yes/No
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To

The Presiding Officer,
Labour Court,



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