



WEB COPY



W.A.No.1267 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.1267 of 2021 and CMP.No.8071/2021

State of Tamil Nadu
rep. by the Divisional Engineer
(Highways and Rural Works),
Tanjore.

.... Appellant

-VS-

1. J.Abraham

2. The Presiding Officer,
Labour Court,
Cuddalore.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 08.12.2014 passed in W.P.No.12884/2006 and to allow the Writ Appeal.

For Appellant : Mr.Ganesan,
Government Advocate

For 1st Respondent : No representation



WEB COPY



W.A.No.12884/2006

J U D G M E N T

[Delivered by S.VAIDYANATHAN, J.]

Mr.D.Nellaiyappan, learned Counsel appeared and submit that he has already returned the papers to the employee-1st respondent and does not hold vakalath. His submission is recorded.

2. The 1st respondent has been served and there is no representation on his behalf.

3. The present Writ Appeal has been preferred against the order of the learned Single Judge dated 08.12.2014 passed in W.P.No.12884/2006 in setting aside the award of the Labour Court, Cuddalore, and directing the Management to employ the workman as an NMR as there is a violation of Section 25-F of the Industrial Disputes Act, 1947, and in the light of the judgment of this Court reported in **1996 (2) LLJ 216** in **Srirangam Co-operative Urban Bank Limited, Srirangam v. Labour Court, Madurai.**



W.A.No.1... of 2022

WEB COPY

4. In the case on hand, the employee contended that he was employed under the Management on 02.07.1985 as an NMR and that he was getting a salary of Rs.525/- p.m. He would further contend that without any rhyme or reason, he was deprived of employment w.e.f. 02.07.1989. He has completed more than 240 days of continuous service in 12 calendar months. He submitted that the action of the Management is one of Section 25-F of the Industrial Disputes Act, 1947. He should be reinstated in service with full benefits.

5. Before the Labour Court, the employee has gone into the witness box and stated as WW1 that he has been a regular employee and that WW2 has stated that the employee-WW1 was also working along with him. In proof of his employment as an NMR, he (WW2) has produced his Identity Card. The employee-WW1 has not produced his identity card or any other document. He has raised the dispute only in the year 1998 after a delay of nearly a decade. Though the employee has filed an application to call for the records from the employer, the employer stated that the documents are not available. We are of the view that an employer cannot be expected to retain the records for years together and that an industrial dispute has got to be raised within a reasonable time. When the industrial dispute was raised in the year 1998,



W.A.No.123 of 2022

WEB COPY

there was no period of limitation and the Apex Court, has held that the delay cannot be taken into account to deprive the meritorious case on record and delay can be looked into while moulding the relief. But, subsequently, the Supreme Court in a case reported in **(2015) 15 Supreme Court Cases 1 in Prabhakar vs. Joint Director, Sericulture Department and another** has 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 enquiry "delay defeats equities".

(emphasis supplied)

6. In the present case on hand, in the light of the judgment of the Supreme Court reported in **(2005) 5 SCC 100 in Manager, Reserve Bank of India, Bangalore v. S.Mani and other** and **(2006) 1 SCC 106 in R.M.Yellathi v. The Assistant Executive Engineer**, the initial burden is on the workman and he has to shift the burden on the employer. Though it appears that the employee has made an attempt to shift the burden on the employer, he has not done within a reasonable time and no



W.A.No.123 of 2022

WEB COPY

employer is expected to retain the records for years together. Even though the limitation of 3 years was introduced in the Industrial Disputes Act, 1947, w.e.f. 15.09.2010, in the light of the decision of the Apex Court in *Prabhakar's case* mentioned supra, we are of the view that the employee is not entitled to any relief, more so, he was not vigilant to approach this court immediately. In such view of the matter, the order of the learned Single Judge is interfered with and the award of the Labour Court is restored.

7. In the result, the present Writ Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.] [R.K.M., J.]
20.03.2023

Index: Yes / No
Internet: Yes / No
tsi

To

The Presiding Officer,
Labour Court, Cuddalore.



WEB COPY



W.A.No.1267/2021

S. VAIDYANATHAN, J.
and
R.KALAIMATHI, J.

tsi

W.A.No.1267/2021

20.03.2023