



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED : 08.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN**

**W.A(MD)No.59 of 2018
and
C.M.P(MD)Nos.281 of 2018, 2671 of 2021 and 11128 of 2023**

- 1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
Chepuk, Chennai – 600 005.
- 2.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Nagercoil.
- 3.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Tuticorin. ... Appellant/Respondent 1 to 3

.Vs.

- 1.N.John Justus
- 2.S.A.Argentak
- 3.The Presiding Officer,
Labour Court,
Tirunelveli ... Respondents 2 and 3/Respondents
4 and 5



WEB COPY

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act praying this Court to set aside the order passed by this Court in W.P(MD)No.5477 of 2009, dated 15.3.2017.

For Appellants	: Mr.R.Baskaran Addl.Advocate General assisted by Mr.R.Satheesh Standing Counsel for TWAD Board
For Respondent-1	:Mr.C.Sivanesan
For Respondent-2	:No appearance
For Respondent-3	:Labour Court

JUDGMENT

(Order of the Court was made by **K.K.RAMAKRISHNAN,J**)

The respondents 1 to 3 in W.P(MD)No.5477 of 2009 have filed this Writ Appeal challenging the impugned order made in W.P(MD)No.5477 of 2009 reversing the order passed in I.D.No.84 of 2002, on the file of Labour Court, Tirunelveli.

2.The first respondent/Writ Petitioner filed W.P(MD)No.5477 of 2009 with the following averments:



WEB COPY

2.1. The Writ Petitioner and other persons were initially employed by the appellants/Department to carry out the work in the Department from 26.06.1993. The department originally carried out the said work by themselves and subsequently, the same was entrusted with a private Contractor. The private Contractor utilized the service of the Petitioner and others upto 10.09.1995. Thereafter, they terminated the service without any notice. Hence, all the persons including the Petitioner raised a claim before the Labour Court in I.D.No. 84 of 2002. In the Industrial Dispute, he specifically stated that similarly placed persons filed industrial dispute and the same was allowed and the Honorable Madras High Court also accepted the case.

3. The Department filed a counter affidavit disputing the entitlement of the first respondent/Writ Petitioner and specifically stated that similar claim was granted to the Petitioner in W.P(MD)No.2263 of 2003. In that case, there was a specific finding that the department failed to produce the records and that even as per their pleadings, he has not continuously worked for 240 days and therefore, they are not entitled for the relief sought for in the industrial dispute. The learned Judge of Labour Court, Tirunelveli, considering all the documents filed by the



WEB COPY

claimants, finally dismissed the Industrial Dispute holding that the first respondent/Writ Petitioner has not established the right of getting regularization and also reinstatement with continuity of service, backwages and other monetary benefits. In the industrial dispute itself, it is stated that the Petitioner's case is different from the case relied on in the case of the Petitioner in I.D.No.148 of 1997. Challenging the same, the first respondent/Writ Petitioner filed Writ Petition before this Court. In the Writ Petition, the first respondent specifically pleaded that his case is similar to that of the persons in I.D.No.84 of 2002. The said plea was accepted by the Writ Court and the Writ Petition was allowed.

4. During the course of hearing, it is the submission of the appellants/Department that the case of Sathia Jacob is different from the case of the Petitioner. There is a specific finding by the Labour Court in that case that the department has not produced any document. In the present case, the first respondent/Writ Petitioner has produced evidence which itself shows that there is no continuity of service in discharging the duty. The said submission of the appellants/Department was rejected by the Writ Court on the ground that Sathia Jacob has served for 35 days in the department and he filed I.D.No.148 of 1997



WEB COPY

for the identical relief in W.P(MD)No.5447 of 2009. The same was allowed and confirmed by the Division Bench of this Court. Against which, Special Leave Petition was filed and the same is pending as on date.

5.The Writ Court also observed that Sathia Jacob's case is similar to the petitioner's case. The writ Court specifically stated that Sathia Jacob served only for 35 days and the Writ Petitioner/first respondent herein had served for 78 days and for the remaining period of 650 days he worked with a Private Contractor. The Labour Court has not considered the document in proper perspective and hence, the Writ Court allowed the Petitioner's prayer and granted the relief as prayed for in the industrial dispute. The same is challenged by the appellants Department by filing the present Writ Appeal.

6.Mr.R.Baskaran, learned Additional Advocate General, with the assistance of Mr.R.Satheesh, learned Standing Counsel for the appellant/TWAD Board made the following submission:

6.1.The Writ Court has not properly appreciated the non-applicability of the case of Sathia Jacob to that of the Petitioner's case. In Sathia Jacob's Case, a



WEB COPY

specific finding has been recorded by the Labour Court that the Department has failed to produce the relevant documents to show that the said Sathia Jacob had not worked for a continuous period of 240 days. Here, the document filed by the Petitioner itself shows that the first respondent has not worked continuously in the said post for a continuous period of 240 days. In the said circumstances, the Writ Court has committed a factual error in allowing the Writ Petition. The first respondent/Writ Petitioner in this case was not appointed through Employment Exchange. Hence the Additional Advocate General seeks for dismissal of the claim made by the Writ Petitioner. He would further submit that the writ Court has further committed an error in not considering the fact that the Petitioner was not appointed by the Department. The learned Additional Advocate General would further submit that there are laches on the part of the first respondent to approach the Labour Court. In the said circumstances, the same was not properly considered by the Writ Court.



WEB COPY 7.Mr.C.Sivanesan, learned counsel appearing for the first respondent/Writ

Petitioner made the following submission:

7.1. There is no limitation under the Industrial Disputes Act to raise an industrial dispute. To substantiate the same, the learned counsel produced the decision of the Honourable Supreme Court in AIR 1968 SCC 218. The learned counsel has also stated that the case of Sathia Jacob and the Writ Petitioner herein are similar in nature and they are similarly placed persons. Sathia Jacob worked for 38 days whereas, the Writ Petitioner has worked for 72 days and both were working with the Private Contractor for 669 days. In the said circumstances, there is no difference between the case of Sathia Jacob and the Writ Petitioner herein. The learned counsel further submitted that the laches is a question of fact. The same has to be pleaded and established before the Writ Court. The Department neither raised the question of laches before the Labour Court or before the Writ Court. Now the learned Additional Advocate General made a submission that laches can be inferred from pleadings and the attending circumstances. Therefore, the learned counsel for the first respondent seeks rejection of the argument made by the learned Additional Advocate General. The learned counsel further



WEB COPY

submitted that Sathia Jacob was also not appointed through Employment Exchange and the Petitioners also were not appointed through Employment Exchange and hence, there is no substance in the argument of the learned Additional Advocate General. In all circumstances, the learned Writ Court rightly passed an order. The learned counsel would further submit that the appellant Department preferred a Writ Appeal before this Court and the same was dismissed and the department has preferred SLP before the Hon'ble Supreme Court against the order passed in SLP.No.27220-27237 of 2015 and the same also was dismissed and all the appointments of persons similarly placed were regularized. In the said circumstances, this Court is also duty bound to consider the subsequent developments that took place after the dismissal of the Special Leave Petition confirming the judgment of the Division Bench of this Court. Therefore, he seeks for confirmation of the order made by the Writ Court.

8.This Court heard the rival submissions made on either side and perused the records and the impugned order passed by this Court.



WEB COPY

9. Discussion on the submission of the learned Additional Advocate

General that the petitioner is not entitled to the benefit of the W.P.(MD).No. 6109 of 2008 confirmed by the Hon'ble Supreme Court in SLP.No. 27220-27237 of 2015:

9.1. The learned Additional Advocate General vehemently and strenuously contended that the writ petitioner's case cannot be treated similar to that of the case covered under the batch of S.L.P., orders in S.L.P.Nos.27220-27237 of 2015 on two grounds:

(i) the writ petitioner was not initially appointed by Board and his appointment was also not through the employment exchange.

(ii) the writ petitioner has not continuously worked to get regularization.

10. To consider the said submission, this Court extracted the portion of the documents of the department.

<i>S. No.</i>	<i>Name of the Workman</i>	<i>Method of Selection</i>	<i>Date of joining in the department</i>	<i>Total Period of the work under the department</i>	<i>Total period of the work under the contract</i>	<i>Date of the termination without notice</i>



WEB COPY

1.	V.Sathiya Jacob	Not through the employment	30.08.1993	35	679	10.09.1995
2.	Respondent/Writ petitioner	Not through the employment	26.06.1993	78	679	10.09.1995
3.	Y.Sahayadas in W.A. (MD).No.287 of 2015	Not through the employment	05.07.1993	81	679	10.09.1995
4.	A.Sahadevan in W.A. (MD).No.288 of 2015	Not through the employment	04.10.1993	14	679	10.09.1995
5.	A.Raj in W.A.(MD).No. 289 of 2015	Not through the employment	-	-	679	10.09.1995
6.	K.P.Premachandran in W.A.(MD).No.290 of 2015	Not through the employment	21.06.1993	86	679	10.09.1995
7.	S.Xavier in W.A. (MD).No.291 of 2015	Not through the employment	06.09.1993	38	679	10.09.1995
8.	R.Ravi in W.A.(MD).No. 292 of 2015	Not through the employment	29.03.1993	178	679	10.09.1995
9.	K.Padmarajan in W.A. (MD).No.293 of 2015	Not through the employment	24.05.1993	114	679	10.09.1995
10.	T.S.Christian Bell in W.A.(MD).No.294 of 2015	Not through the employment	24.05.1993	108	679	10.09.1995
11.	T.Sundara Raj in W.A. (MD).No.295 of 2015	Not through the employment	03.05.1993	174	679	10.09.1995
12.	P.Vijayakumaran in W.A. (MD).No.296 of 2015	Not through the employment	22.08.1993	11	679	10.09.1995
13.	D.Robinson in W.A. (MD).No.297 of 2015	Not through the employment	14.06.1993	96	679	10.09.1995
14.	K.Paguleyan in W.A. (MD).No.298 of 2015	Not through the employment	06.09.1993	28	679	10.09.1995
15.	S.M.Bensigher in W.A. (MD).No.299 of 2015	Not through the employment	-	-		10.09.1995
16.	A.Bright Singh in W.A. (MD).No.300 of 2015	Not through the employment	07.06.1993	91	679	10.09.1995
17.	A.E.John Jeya kumar in W.A.(MD).No.301 of 2015	Not through the employment	05.07.1993	184	679	10.09.1995
18.	D.Yesudoss in W.A. (MD).No.302 of 2015	Not through the employment	28.06.1993	85	679	10.09.1995
19.	A.Selvin Joseph in W.A. (MD).No.303 of 2015	Not through the employment	30.08.1993	35	679	10.09.1995



WEB COPY

20.	A.Lakshmana Perumal in W.A.(MD).No.304 of 2015	Not through the employment	-	-	679	10.09.1995
-----	--	----------------------------	---	---	-----	------------

10.1.From the above, it is undoubtedly clear that the petitioner is similarly placed with the above persons mentioned in the S.L.P.Nos.27220-27237 of 2015. The said persons and the petitioner were initially appointed by the department to work in the appellant department in the scheme “*Kulithurai River combined Drinking Water Scheme 1986*” to enforce the said scheme, they were appointed and allowed to work by the Board as “NMR”. Thereafter, the Government took a decision to entrust the work with the contractor vide proceedings No.4 of the Board dated 03.01.1994. But, the contractor dismissed all the persons on 10.09.1995 without any notice. Even prior to that I.D.O.P.No.181 of 1995, had been filed by 20 labourers before the Labour Court, praying to prohibit the department from engaging contractor, namely, the second respondent in the writ appeal. Pending the same, they were terminated. Therefore, Sathiya Jacob had filed the I.D.O.P., along with the other persons in the year 1997. In the said I.D.O.P., counter was not filed for five years and hence, exparte award was passed. Challenging the same, a writ petition was filed before this Court and this



WEB COPY

Court remitted the matter back to the labour Tribunal. The Tribunal dismissed the I.D.O.P. Challenging the same, Sathiya Jacob filed W.P.Nos.,6109 and 21408 of 2008. The same was allowed by the writ Court with the specific finding that the Board appointed him on 30.08.1993 and he worked under the Board for 35 days and continued to work under the contractor from 01.11.1993. After the continuation of the work for 679 days, he was stopped by the contractor on 10.09.1995. Therefore, this Court specifically held that he had continuously worked and he is entitled for the regularization and other relief claimed in I.D. The same was confirmed by the Division Bench in Writ Appeal No.952 of 2014 by order dated 24.04.2015. The same was also confirmed by the Hon'ble Supreme Court. In the meantime, the petitioner filed I.D.No.84 of 2002. The Labour Court dismissed the I.D., on the ground that the petitioner was not appointed by the Board and the document filed by him itself showed that he did not work for continuous period of 248 days with the department. His case was not similar to that of Sathiya Jacob's case. But the same was not accepted by this Court in the impugned writ order in W.P.(MD).No.5477 of 2018, which was filed by the first respondent challenging the dismissal of the I.D.No.84 of 2002. The writ Court specifically held that Sathiya Jacob worked for 35 days and the writ petitioner



WEB COPY

worked for 78 days in the department and also worked for 679 days under the contractor. Apart from that, both were not appointed through the employment exchange. Hence, the petitioner and the above said mentioned persons in S.L.P.Nos.27220-27237 of 2015 discharged their duty. From their official communication dated 26.10.1998 filed before this Court, which formed part of the earlier proceedings, it is clear that the scheme itself allotted fund for the permanent workmen so as to keep the work in pace.

11. Admittedly, the first respondent/Writ Petitioner is one among 29 persons who was employed by the department initially in the year 1993 for carrying out certain works. Subsequently, in the year 1994, they took a policy decision that the said work has to be entrusted with the private Contractor. The Private Contractor also utilized the service of the Petitioner for a continuous period of 669 days. The said fact is revealed from the document produced by the department and also same was not opposed by the learned Additional Advocate General. In the said circumstances, the learned Additional Advocate General's submission that the case of the first respondent/Writ Petitioner is not similar to that of Sathia Jacob is not acceptable.



WEB COPY

12. Further, Sathia Jacob, Petitioner and other persons were appointed by the appellants/ Department as NMR and the department extracted work for number of days. Hence, the contention of the learned Additional Advocate General that the department has not appointed these persons is not correct. The learned Writ Court also considered the fact that Petitioners had continuously worked for 669 days under the reign of the private contractor and also for 35 days under the Department. They were continuously employed by the appellants/Department through the Private Contractor. Hence the Writ Court allowed the Writ Petition on the ground that the benefit extended to Sathia Jacob shall also be made available to the Petitioner. In the said circumstances, this Court finds no merit in the contention of the learned Additional Advocate General seeking to set aside the order passed by the Writ Court.

13. The Learned Additional Advocate General relied the judgment of the Hon'ble Supreme Court reported in 2019 (4) SCC 307, Civil Appeal No. 5027 of 2024 (Mrinmoy Maity Vs Chhanda Koley and others) and stated that the 1st respondent has filed I.D.No. 84 of 2002 belatedly and hence his claim was hit by the theory of laches. He was the bench sitter and hence his belated claim could



WEB COPY

not be entertained by the labour Court.

13.1. The judgment relied by the Learned Additional Advocate General has no application to the facts of the present case. In the said judgment there was a dispute about “LPG distributorship”. The said writ petition was filed under Article 226 of the Constitution of India. Therefore, the Hon'ble supreme Court held as follows:-

Delay or laches is one of the factors which should be borne in mind by the High Court while exercising discretionary powers under Article 226 of the constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity was on the part of the applicant to assert his right and has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

13.2. The learned Additional Advocate General relied the judgment of the supreme Court 2019 (4) SCC 307. In the said judgment, the Hon'ble Supreme Court discussed about the claim of the daily wager. In the said case the claim was made after 15 years from the date of the termination. In the present case there was no such situation as discussed supra.



WEB COPY 13.3. The learned counsel for the workman submitted that there is a difference between the cases where laches are said to have happened which approaching under article 226 of Constitution of India and the labour matters filed before the labour Court raising industrial dispute. To raise industrial dispute, there is no period of limitation. Hence, he seeks to reject the plea of laches strenuously put forth by the learned Additional Advocate General. He relied the judgment of the Hon'ble Supreme Court reported in *AIR 1968 (SC) 218*.

13.4 In this case initially there was an attempt of retrenchment and there was an attempt to thwart permanency of the petitioner and other persons by entrusting the work with the contractor and hence, the writ petition in W.P.No. 806 of 1991 was filed by the labour union of the respondent. In the said writ petition, it is specifically averred that in order to thwart the legitimate confirmation of status, the department attempted to make unfair trade practice to him under to the legitimate expectation of the workman to get the permanent status. Pending the writ petition, the work was entrusted with the contractor and ultimately the petitioner and other members of the association were terminated by the contractor and hence 20 labourers including the respondent had raised the industrial dispute in I.D.No.181 of 1995 and there was a specific pleading that



WEB COPY

requirement of 25 (F) of the I.D. Act 1947 has not been followed. The same was allowed and thereafter department filed writ petition before this Court and writ petition was remitted back to the labour Court to decide the issue of continuous employment by giving opportunity to the department. In the said circumstances, the individual disputes were raised and the first case was decided in I.D.No. 148 of 1997 filed by “*V.Sathia Jacob*” and the same was allowed by the award dated 31.08.2007. Thereafter number of I.Ds filed in the year 1997 were disposed in similar fashion. Subsequently, the petitioner filed I.D.No. 84 of 2002 and the same was allowed by the labour Court considering the specific circumstances of the case that the petitioner is the last person among the 20 persons. During the course of the said industrial dispute, the department never raised any plea of laches. It is settled principle, the laches is a question of fact and the same could not be allowed to raise for the first time in this writ appeal. In this case, the theory of laches was neither raised before the labour Court nor raised before the writ Court. More particularly in this case, the entitlement of the workman is pending in the I.D was remitted back to the labour Court which was raised in the year 1995 itself to give opportunity to the department to prove its stand that the respondent/workman has not worked for continuous period. The said plea of the



WEB COPY

department was negated by the labour Court on the basis of the own record which clearly demonstrated that the respondent and other workers had been working for continuous period. The said record was placed by the workman in this case also. Further there is no period of limitation to raise the industrial dispute. Even before decision of the I.D. of the “*V.Sathia Jacob*”, the present I.D has been filed.

13.5. There is a thin line of difference in entertaining the plea of the laches in the case of the relief claimed directly under the article 226 of Constitution of India and the jurisdiction of the writ Court to test the validity of the labour Court award passed on the basis of the industrial dispute raised by the workman under the industrial dispute Act, 1947. There is no limitation to raise industrial dispute under the industrial dispute Act, 1947. The object behind the same is that industrial dispute is entertained on the grounds of social justice and hence, there is no application of laches in the case of the deprivation of the social justice. The same has been considered by the Hon'ble Three Bench of Supreme Court in ***AIR 1968 SC 218*** in the following paragraph :

6. These applications were made in 1962 though they



WEB COPY

related to claims for the years commencing from 1948 and onwards. The contention therefore was that part of these claims, at any rate, must be held to be barred either by limitation or by reason of laches on the part of the workmen. The answer to this contention is clearly provided in the case of Bombay Gas Co., 1964-3 SCR 709 = (AIR 1964 SC 752) (Supra) where a distinction was drawn between considerations which would prevail in an industrial adjudication and those which must prevail in a case filed under a statutory provision such as section 33-C. (2). This Court pointed out there that whereas an industrial dispute is entertained on grounds of social justice and therefore a Tribunal would in such a case take into consideration factors such. As delay or laches, such considerations are irrelevant to claims made under a statutory provisions unless such provision lays down any period of limitation. The Court held that there is no justification in inducting a period of limitation provided in the limitation Act into the provisions of section 33-C. (2) which do not lay down any limitation and that such a provision can only be made by legislature ii it thought fit and not by the Court on an analogy or any other such consideration. It is a matter of some significance that though the legislature amended section 33-C by Act 36 of



WEB COPY

1964 and introduced limitation in the section, it did so by means of a proviso only in respect of claims made under sub section 1 but did not provide any limitation for claims under sub-s (2). In view of this fact and the decision in Bombay Gas Company's case. 1964 -3 SCR 709 – (AIR 1964 SC 752) (supra) Mr.Gokhale conceded that he could not press the contention that the present claims were barred by limitation or laches.

13.6. From the above principles of the Hon'ble Supreme Court and also the non applicability of the period of limitation to raise the industrial dispute, the plea of the learned Additional Advocate General that the respondent /workman's relief is hit by the laches cannot be accepted.

13.7. In view of the above discussion the finding of the labour Court that the petitioner is entitled to get relief claimed in I.D.84 of 2002 needs no interference. Further, the finding of the writ Court that the 1st respondent /workman herein is similarly placed person as in the case of “V.Sathia Jacob” and he is entitled to the relief ordered in the said case of the “V.Sathia Jacob” is well considered one and there is no reason to differ with the said finding of the writ Court. In result, concurrent finding of the both labour Court and the writ Court is in accordance with law and the same do not suffer from

20/22



WEB COPY

perversity and hence, both are liable to be confirmed.

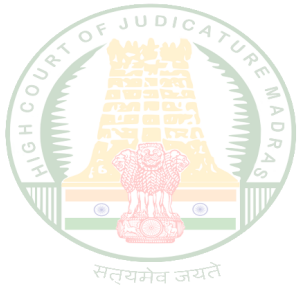
12. From the discussions made above, this Court finds no merit in the Writ Appeal and accordingly, the Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[P.V.,J.] [K.K.R.K.,J.]
08.08.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn/vsg

To

The Presiding Officer,
Labour Court,
Tirunelveli



WEB COPY



P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

vsn/vsg

JUDGMENT MADE IN

W.A(MD)No.59 of 2018
and
C.M.P(MD)Nos.281 of 2018, 2671
of 2021 and 11128 of 2023

08.08.2024