



W.P.No. 7993 of 2020

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.2.2025

Pronounced on : .2.2025

CORAM:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 7993 of 2020

P. Vasantha,
W/o. S.Perumal,
Seeranga Chetty Street,
52nd Division,
Kondampatti,
Salem – 636 006.

... Petitioner

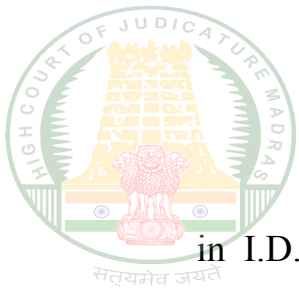
Vs.

1. The Commissioner,
Salem Corporation,
Salem – 636 001.
2. The Assistant Director of
Town Panchayats,
Rajiv Gandhi Road,
Sankar Nagar,
Salem – 636 007.

... Respondents

Prayer in W.P.No.7993 of 2020

To issue a writ in the nature of Certiorarified Mandamus calling for the records
from the Labour Court, Salem relating to the impugned award dated 21.12.2016



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in I.D.No.168 of 2010 and Quash the same and direct the Respondents to reinstate the Petitioner with continuity of service and all other attendant benefits.

Appearance of Parties:

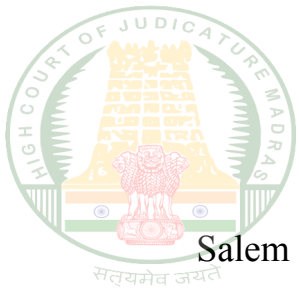
For Petitioner : Mr. S.Ayyathurai, Advocate
For R1 : M/s.N.Devi, Advocate
For R2 : Mr.K.Tippu Sulthan,
Government Advocate

JUDGMENT

Heard.

2. The writ petitioner is a workman who has filed this petition challenging the Award of the Labour Court, Salem, passed in *I.D. No. 168/2010* dated 21.12.2016, by which she was denied any relief. The writ petition was admitted on 05.06.2020, and the Respondents are now represented by counsel.

3. The petitioner contends that she was invited for an interview for the post of Sanitary Worker by the 1st Respondent Commissioner through a letter dated 08.09.1983. Following the selection process, she was appointed as a Sanitary Worker by the Selection Grade Town Panchayat, Jari Kondalampatti,



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Salem District, through an order dated 04.10.1983. A service register was also maintained for her employment. However, the Executive Officer of the Town Panchayat later issued a memo dated 30.05.1989, stating that she had been on unauthorized absence from duty until 23.11.1987, totalling 11 months and 5 days. Even after 24.11.1987, she allegedly failed to report for duty. Even after 24.11.1987, she did not turn up for duty. Even when her probation was not declared satisfactory in a period of 5 years, 7 months and 19 days service, she had not turned up for 3 years, 3 months and 5 days. She was, therefore, issued a show cause notice, directing her to explain why her services should not be terminated.

4. The petitioner, in her reply dated 10.07.1989, stated that while cleaning a latrine, she experienced severe stomach pain and conveyed a message through her husband regarding her inability to report for duty. However, when her husband approached the record clerk, he was allegedly informed that she need not return to work. Despite making several requests, she was not reinstated. Meanwhile, the Town Panchayat was merged with the



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Salem Corporation. At this stage, the petitioner submitted representations to the Hon'ble Chief Minister and the District Collector, Salem, seeking redress. One such representation, submitted to the Minister for Agriculture on 07.02.2008, was forwarded to the 1st Respondent Corporation. In response, the Assistant Commissioner, Ward No.4, informed the petitioner that the Corporation had never received her service records as a Sanitary Worker from the Town Panchayat.

5. Subsequently, the petitioner issued a legal notice to the Respondents on 08.09.2008, demanding employment. In response, the 2nd Respondent stated that all records pertaining to the Town Panchayat employees had been transferred to the 1st Respondent Corporation. Following this, the petitioner raised an industrial dispute under Section 2A of the Industrial Disputes Act. Since the conciliation proceedings did not result in a settlement, the Conciliation Officer issued a failure report on 07.12.2009. Based on the failure report, the petitioner filed a claim statement dated Nil before the Labour Court,



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Salem. The dispute was registered as I.D.No. 168/2010, and notices were issued to the Respondents.

6. Before the Labour Court, the petitioner and her husband deposed as WW1 and WW2, respectively. On her behalf, nine documents were submitted and marked as Ex.W1 to Ex.W9. On the Respondents' side, two witnesses, Kumar and Nagarajan, were examined as MW1 and MW2. On their side, three documents were filed and marked as Ex.R1 to Ex.R3. After analyzing the evidence and materials presented, the Labour Court issued an Award in I.D. No. 168/2010, dated 21.12.2016, dismissing the petitioner's claim and holding that she was not entitled to any relief.

7. The Labour Court found that the petitioner had remained inactive for 23 years from 23.11.1987 until she raised the dispute without taking any steps to challenge her alleged non-employment. The Court noted that after her absence, she did not attempt to resume work. When the Town Panchayat was merged with the Corporation, her name was not included in the rolls, and

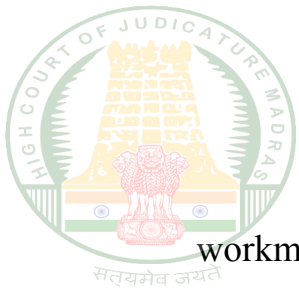


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further observed that she had failed to apply for leave properly and had only issued a legal notice on 08.09.2008 through her counsel. If she had indeed been denied employment by the Town Panchayat, she should have pursued appropriate legal remedies at that time. Based on these findings, the Court concluded that she was not entitled to any relief.

8. Mr. S. Ayyathurai, learned counsel for the petitioner, advanced arguments in line with the grounds stated in the affidavit filed in support of the writ petition. It was contended that the workman was appointed to a permanent vacancy, with her Service Register reflecting an entry as of 10.10.1983. Additionally, Provident Fund deductions were made in her name, and no order was issued after she submitted her explanation to the show-cause notice. The learned counsel further argued that the petitioner could not be held responsible for the Town Panchayat's failure to forward her name to the Corporation at the time of the merger. He also asserted that her non-employment violated Section 25F of the Industrial Disputes Act, thereby entitling her to reinstatement with back wages. However, considering that the



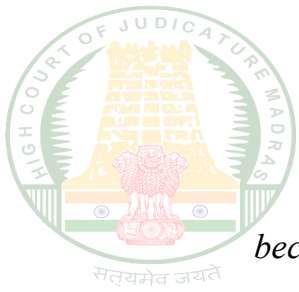
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workman has now attained the age of superannuation, the learned Counsel submitted that she may be adequately compensated as a measure of fairness.

9. This case does not warrant any interference with the Labour Court's Award, as the petitioner is guilty of gross delay and laches. Even if the 2010 amendment to the Industrial Disputes Act does not apply, the petitioner remains culpable of delay and laches in the light of *Prabhakar v. Joint Director, Sericulture Department & Ors.*, (2015) 15 SCC 1, where the Court observed as follows:

“ 40.

..... 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.Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and



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because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under [Section 2A](#) of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection.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 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'.

....

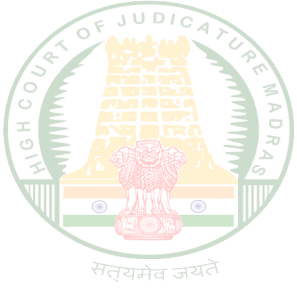
42.the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary 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."



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10. Beyond the delay issue, the petitioner lacks merit in her claim. After receiving notice regarding her prolonged unauthorized absence of over a year, her only response was that she had informed her husband, Perumal (WW2), who allegedly conveyed her condition to the Record Clerk, who in turn told her she need not return to work an assertion that is entirely implausible and lacks credibility. By the time she sought redress, the Town Panchayat had ceased to exist, and only the names of employees still on the rolls were forwarded to the 1st Respondent Corporation, where they presumably continued their employment. The Respondents have categorically stated that, since the petitioner's name was not on the rolls, it was never forwarded during the merger process. Since the petitioner has failed to substantiate her claim, this cannot be treated as a case of retrenchment but rather one of abandonment of service and prolonged unauthorized absence. Moreover, under Section 2A of the Industrial Disputes Act, an employee cannot raise a dispute against an entity that was never her employer, further weakening her case.



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11. The writ petition is misconceived and lacks merit. Accordingly,

W.P. No. 7993 of 2020 is dismissed. No costs.

25.02.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Copy to:

1. The Presiding Officer,
Labour Court, Salem
(with records if any received)
2. The Commissioner,
Salem Corporation,
Salem – 636 001.
3. The Assistant Director of
Town Panchayats,
Rajiv Gandhi Road,
Sankar Nagar,
Salem – 636 007.



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DR.A.D.MARIA CLETE, J.

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Pre-delivery Judgment in
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25.02.2025