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W.P. No.2118 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.2118 of 2022
and W.M.P. Nos.4384 and 4385 of 2025

The Tamil Nadu Minerals Limited,
represented by its Chairman and
Managing Director,
"TWAD HOUSE"
No.31, Kamaraj Salai, Chepauk,
Chennai - 600 005.

.. Petitioner

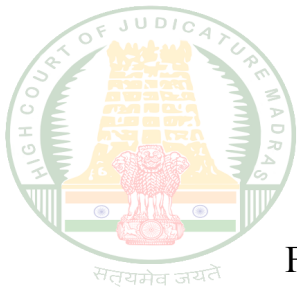
vs.

G. Karuppasamy S/o. Gurubatham.

.. Respondent

PRAYER: This Writ petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the Award dated 06.09.2013 passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai - 600 006 in I.D. No.88 of 2011 and to quash the same in so far as the direction directing reinstatement of the respondent herein with continuity of service.

For petitioner : Mr. T.R. Sathiyamohan



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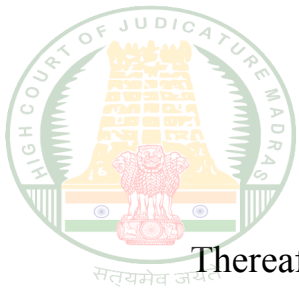
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For Respondents : Mr. K.M. Ramesh, Senior Counsel,
for Mr. Apunu

ORDER

This Writ petition has been filed by the petitioner to quash the order passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai in I.D. No.88 of 2011 dated 06.09.2013, wherein the respondent herein, has raised an industrial dispute challenging the termination of service by the petitioner Management and the same was allowed. Aggrieved over the same, the present Writ petition has been filed by the petitioner Management.

2. The learned counsel appearing for the petitioner would submit that the respondent was working as an unskilled labourer at its Graphite Beneficiation Plant of the petitioner company at Sivagangai. He has been a chronic absentee during his entire tenure of service from the year 1994. While so, in the year 2002, he absented himself for more than 6 months without permission or leave. Therefore, a Charge Memo was issued on him and based on his medical report, he was allowed to work. But again, he was absented from 01.12.2003 without any intimation. Therefore, a Memo dated 19.12.2003 was issued to the respondent and he also submitted his explanation stating that due to ill-health, he was unable to attend duty.



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Thereafter, he was allowed to work on 20.12.2003. While so, again he remained absent unauthorisedly from 21.12.2003 onwards. Therefore, a Charge Memo dated 02.01.2004 was issued to the respondent and the same was returned unserved. Therefore, a domestic enquiry was conducted and the Enquiry Officer issued notice to the respondent on 03.02.2004 by fixing the enquiry date on 16.02.2004. The said cover was returned as 'he is not in India'. Thereafter, the Works Manager, Sivagangai sent a notice dated 26.02.2004 directing the respondent to report for duty within a week, failing which, his employment would be cancelled and no more chance would be given to him by relying upon the provision of the Tamil Nadu Industrial Employment (Standing Ordes) Act, 1946 and Rules 1947 as the respondent has been unauthorizedly absent from duty from 21.12.2003 onwards. The said notice dated 26.02.2004 was also pasted on the door of the respondent's house and the family members of the respondent are very well aware of the notice. Thereafter, a final order dated 29.03.2004, removing the name of the respondent from the rolls with effect from 21.12.2003, was sent to the respondent and the same was also returned on 31.03.2004 with the postal endorsement that 'he is not in India'. As a result of which, the respondent's name was removed from the rolls. Thereafter, on 01.07.2008, after over 5



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long years, the respondent gave a representation to the petitioner requesting to provide employment to him and the same was rejected and the subsequent representation given by the respondent was also rejected by the petitioner on 03.10.2009. Therefore, the respondent raised an industrial dispute and the conciliation was failed. Hence, the matter was referred for adjudication before the Central Government Industrial Tribunal / Labour Court, Chennai. The Industrial Tribunal / Labour Court, Chennai had erroneously allowed the petition directing the petitioner to reinstate the respondent into service with continuity of service without backwages. The Labour Court failed to consider that notice was issued to the respondent, but he never turned up either for duty or to attend the enquiry proceedings. A letter dated 26.02.2004 was issued to the respondent directing him to report for duty within a week, failing which, his employment will be cancelled without any further chance by relying upon the provisions of the Tamil Nadu Industrial Employment (Standing Orders) Act and Rules. Even after that, the respondent had not chosen to attend the duty and thereby, his name was removed from the rolls. The Labour Court failed to consider that the claim raised by the respondent was after 5 years from the date of removal of his name from the rolls. Striking the name of the workman would not cover any of the Section 2(oo)



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of the Industrial Disputes and it will not amount to retrenchment under Section 25(f) of the Industrial Disputes Act. The Labour Court failed to consider that the respondent abandoned the work and the respondent failed to explain as to where he was during the said period of absence concerned. Therefore, the order passed by the Labour Court is not in accordance with law and the same is liable to be quashed.

3. The learned Senior counsel appearing for the respondent would submit that the respondent had joined the services of the petitioner Management on 16.06.2004 and he was provided with employment on the ground that he was one of the persons who had given his land for the graphite mines in Sethi Udayanathapuram in Sivagangai Taluk. He had worked with the petitioner Management till 01.12.2003. When he was working in the graphite mines, due to ill-health, he was admitted in the hospital and thereafter, he had been taking private treatment. Therefore, he was not able to report for work. Thereafter, he was referred to the Medical Board and he also appeared before the Medical Board and he was told that after getting medical report, they will consider for his employment. When the respondent approached the officials, they reported that after receiving reply from the



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Head Office, they will permit him to work. Already a Charge Memo was issued on 26.03.2003 and the respondent has not submitted any explanation for the same, but not received any notice for conducting domestic enquiry and no termination order was received by him. Thereafter, when a representation was made by the respondent to the petitioner Management, a reply dated 06.08.2009 was given stating that his appointment has been cancelled as he had unauthorizedly absented himself. Therefore, the above said termination order passed by the Management is illegal. The above termination would amounts to retrenchment and the Management ought to have complied with the requirements of Section 25(f) of the Industrial Disputes Act. Therefore, he raised an industrial dispute before the Central Government Industrial Tribunal-cum-Labour Court, Chennai. Before the Labour Court, on the side of the respondent herein, one witness was examined and Ex.W1 to Ex.W.17 were marked. On the side of Management, one witness was examined and 8 documents were marked. After considering the entire evidences adduced on both sides, the Labour Court has correctly held that the respondent was removed from the rolls of the Management without any notice and without any enquiry. Therefore, the Labour Court has correctly ordered for reinstatement of the respondent with continuity of service and without any

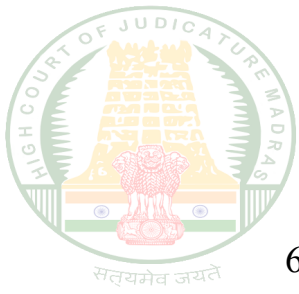


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backwages. Therefore, the above said award passed by the Labour court is a well reasoned order and therefore, the present Writ petition is liable to be dismissed.

4. Heard both sides and perused all the materials available on record.

5. In this case, there is no dispute that the respondent was working under the petitioner Management and the absence of the respondent is also not disputed. According to the petitioner Management, the respondent was unauthorizedly absent and thereby, they issued a notice on many times for joining duty and inspite of that, he did not join duty. Thereby, his name was removed from the rolls of the petitioner Management. According to the respondent, due to his ill-health, he was unable to attend the work and the same was also informed to the Management through a letter enclosed with medical records and thereafter, a Charge Memo was also issued to him, the respondent also submitted his explanation, thereafter, no any notice was issued in respect of the enquiry and the punishment awarded to him. While so, it is the duty of the Management to prove that the order of punishment was passed after giving sufficient opportunity to the respondent.



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6. The Management removed the respondent from service on 21.12.2003. Thereafter, the respondent gave representation to the Management for joining duty and the Management gave a reply that his name was removed from the rolls of the Management as he was unauthorizedly absent. In this context, the respondent himself admitted that he received a Show Cause Notice dated 19.12.2003 in respect of removal of the respondent's name from the rolls of the Management. However, he did not receive any notice with respect to the enquiry and the petitioner also not conducted any enquiry before removing the name of the respondent from the rolls of the Management. The petitioner Management failed to produce any document to show that the enquiry was conducted and thereafter only, the respondent's name was removed from the rolls of its workers. From the evidences of the Management witnesses, it is clear that no enquiry was conducted and without any enquiry, the name of the respondent was removed from the rolls. Therefore, there is a violation of principles of natural justice by the Management.

7. The enquiry was not conducted by the Management before removing the respondent from the rolls, which is violation of principles of natural



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justice and is against law. At this juncture, the learned counsel appearing for the petitioner submitted that the continuous absence by the respondent, amounts to abandonment of work and thereby, as per the Tamil Nadu Industrial Employment (Standing Orders) Act, 1946 and Rules 1947, the final notice was issued to the respondent and even after that, the respondent did not attend the duty. As far as abandonment of work is concerned, mere absence for some time alone would not amount to abandonment of work and it should be voluntarily.

8. In this case, merely absent for some time, that too due to ill-health, cannot be treated as 'abandonment of work'. Therefore, the Labour Court after considering the facts and circumstances and the evidences adduced on both sides, correctly allowed the industrial dispute and ordered for reinstatement with continuity of services and other consequential benefits and without backwages. Admittedly, the respondent has not challenged the order as against the denial of backwages.

9. The learned counsel appearing for the respondent would submit that the Labour Court passed the order impugned as early as on 06.09.2013, but



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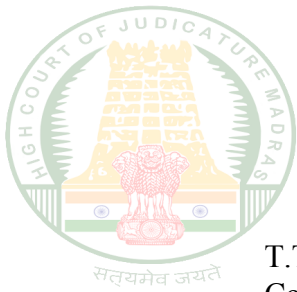
the Writ petition has been preferred in the year 2022 and thereby, the Writ petition is liable to be dismissed on the ground of delay and laches. In this context, the learned counsel for the respondent has relied upon the judgment of this Court in ***The General Manager, State Express Transport Corporation Tamil Nadu Ltd., Chennai vs. The Special Deputy Commissioner of Labour, Chennai and another in W.A. No.641 of 2023***, wherein, the Division Bench of this Court has held in Para Nos.5 to 7 as follows:-

5. In *Karnataka Power Corpn. Ltd. v. K.Thangappan*, (2006) 4 SCC 322, the Supreme Court, in Paragraph 6, held as follows:

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party”.....

16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of jurisdiction.

6. In *Chennai Metropolitan Water Supply and Sewerage Board v.*



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T.T.Murali Babu, (2014) 4 SCC 108, in Paragraphs 16 and 17, the Supreme Court held as follows :

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“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

7. In the instant case, the Approval Petition was rejected by the Authority under the Industrial Disputes Act, 1947, on 30.03.2015, whereas, the Writ Petition was filed by the management only in the year 2022, i.e., after a lapse of seven years, challenging the order of the Authority, dated 30.03.2015, and there was no explanation in the affidavit for the inordinate delay in filing the Writ Petition. Therefore, the learned single Judge was right in dismissing the Writ Petition on the ground of laches”.

10. On a careful perusal of the above said judgment, it is clear that the delay or laches are one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction



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with the lapse of time and other circumstances, causes prejudice to the opposite party. In the case on hand, the Labour Court passed award on 06.09.2013 and the same was published in the Government notification on 18.03.2015. But the Writ petition was filed in the year 2022. There is no explanation for the said inordinate delay on the side of the Management.

11. Therefore, as discussed above, this Court is of the opinion that this Writ petition has no merits and deserves to be dismissed.

12. Accordingly, this Writ petition is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes/No
Speaking order/non-speaking order
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