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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 7th November, 2014

+ W.P.(C) 5387/2013

NARESH KUMAR SACHDEVA Petitioner

Represented by: Mr. Sarfaraz Khan,
Advocate

versus

M/S J K STEEL

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Previous order sheets reveal that notice to the respondent was issued in the instant petition vide order dated 30.08.2013.
2. Accordingly, Mr. Nishant Nanda, advocate appeared on behalf of the respondent on 22.10.2013. However, thereafter on six consecutive dates appeared none on behalf of respondent. So is the position today. However, this Court has decided to dispose of the petition in the absence of the respondent.
3. Vide the present petition, the petitioner has assailed the order dated 28.02.2013 passed by the Presiding Officer, Labour Court V, Karkardooma Court in PWA No.67/2009.
4. The petitioner raised a dispute vide ID No.26/2005 and award was

passed in favour of the petitioner on 07.02.2006 whereby the respondent/establishment was directed to reinstate the petitioner with continuity to service along with 50% back wages and all other benefits.

5. Being aggrieved, the respondent filed W.P.(C) No.669/2007 before this Court. The said petition was dismissed on 25.02.2009 for non-prosecution.

6. Mr. Sarfaraz Khan, Learned counsel appearing on behalf of the petitioner submits that, till date, the respondent/management has not challenged the dismissal order. Thus, the order dated 25.09.2009 has attained finality.

7. The petitioner, thereafter, filed an application under Section 15 of The Payment of Wages Act, 1936 before the Labour Court- V, which was dismissed vide order dated 28.02.2013 as under:-

“In the present case, the award was passed on 07.02.2006, the same was published on 04.05.2006, and it became enforceable w.e.f. 03.06.2006. Therefore, the period of twelve months shall be counted after 03.06.2006. As per the aforesaid provisions, it was the duty of the applicant to file the present application within twelve months after 03.06.2006, but the applicant has filed the application only on 01.05.2009. It is observed that applicant has not filed any application seeking condonation of delay. Therefore, there is no evidence on record by which it can be inferred that there was sufficient reason, which prevented the applicant to move the present application within twelve months after 03.06.2006. Therefore, it seems that the applicant is barred by limitation and the applicant is not entitled to any relief under

*Section 15 of Payment and Wages Act, 1936.
Hence, the aforesaid application is dismissed and
disposed of accordingly.”*

8. Learned counsel submits that an application under Section 5 of The Payment of Wages Act, 1936 is to be filed within twelve months from the publication of the award. However, if the workman is failed to file the application within the prescribed time, he has to justify the delay and the learned Labour Court is to consider the application and, if convinced, the delay is to be condoned, otherwise, dismiss the same.

9. Learned counsel further submits that after the award being published, the workman has to approach under Section 15 to get the payment of wages. Accordingly, the petitioner moved an application for direction to get the back wages from the respondent/establishment. However, the same was dismissed on the ground that the said application neither was filed within twelve months of the publication nor application for condonation of delay has been moved.

10. Mr. Khan submits that in the application under Section 15 of The Payment of Wages Act, 1936 in paras 2, 3 and 4, it is stated as under:-

“2. That the claimant is entitled to receive/recover from the management M/s. J.K. Steel at Y/152, Loha Mandi, Naraina, New Delhi – 110028, a sum of Rs.1,08,900/- in terms of award dated 07.02.2006, which have become enforceable w.e.f. 03.06.2006. Copy of award dated 07.02.2006, and certificate of its publication are annexed here as annexure 1 to 2.

3. That the management after receipt of the copy of award dated 07.02.2006, alongwith certificate of

publication failed to implement the award dated 07.02.2006, and filed an writ before Hon'ble High Court of Delhi which was pleased to dismissed by the Hon'ble Justice Sh. Kailash Gambhir on 25.02.2009. It is pertinent to mention here that thereafter the management neither moved any application for restoration of the said writ nor implement the award dated 07.02.2006, intentionally and deliberately till to date reason best known by the management.

4. That the claimant got served a notice of demand through his counsel upon the management on 20.03.2009, by courier which was duly served upon the management but the management failed to implement the award dated 07.02.2006. Copy of demand notice dated 13.10.2008, its courier receipt are annexed herewith as Annexure 3 to 4."

11. Ld. Counsel further submits that keeping in view the averments made in the aforesaid application under aforesaid Paras, the learned Labour Court had to condone the delay and decide the application on merit. However, the same has been rejected on the ground of delay only.

12. Mr. Khan submits that under The Payment of Wages Act, 1936 and Rules, there is no provision to make a separate application under Section 5 of the Limitation Act. Therefore, the delay has been fully explained in the application filed under Section 15 itself. The learned Labour Court has ignored the said fact.

13. To strengthen his arguments, learned counsel for the petitioner has relied upon the case of *Union of India vs. Babu Ram AIR 1962 Allahabad 52 (V 49 C 13)*, wherein it is stated as under:-

“(23). This brings me to the next question--namely, whether the decision of the appellate court condoning the delay is vitiated by any material irregularity. After hearing learned counsel I am of the view that it is not. Counsel for the Railway vehemently argued that the learned judge had no jurisdiction to condone the delay unless there was before him an application supported by an affidavit explaining the causes of delay. I do not agree. Mr. Jagdish Swarup's argument is based on the analogy of the procedure prescribed by this Court for hearing applications under Section 5 of the Limitation Act. Chapter IX Rule 12(1) (XIV) of the High Court Rules enjoins that every application under Section 5 of the Limitation Act must be supported by an affidavit. But neither the Payment of Wages Act nor the rules under it prescribe any procedure corresponding to our rules governing applications under Section 5 of the Limitation Act. Mr. Jagdish Swamp conceded that no such procedure was prescribed.

The second proviso to Section [15\(2\)](#) merely requires that the applicant should satisfy the Authority that he has sufficient cause for not making the application within the prescribed period. It is true that the compensation Commissioner did not formally decide the issue of limitation after framing it. But the appellate court, after giving a full opportunity to the parties to state their cases for and against condonation, condoned the delay. Mr. Jagdish Swarup conceded that an appeal is, a continuation of the original proceedings and the powers of the appellate authority are co-extensive with that of the Compensation. Commissioner. That being so, I am unable to hold that there has been any violation of procedure prescribed by law or of the principles of natural justice.

(24). Furthermore, no injustice has been caused to the Railway. After the order of removal had been declared illegal the Railway had not continued the enquiry against Babu Ram. The charges against him must be

presumed to have been dropped. He continued to be an employee of the Railway and is entitled to his wages.

(25). It is true that he could, have filed his application earlier, but he Was obviously under a misapprehension that his claim would not be entertained by the Authority under the Payment of Wages Act as long as the order of removal was in force. The Railway too were under a similar impression. In their written statement before the Authority the Railway contended that the claim for wages was premature as the Railway had filed a second appeal against the decree declaring the order of removal to be illegal. If the Railway with all the legal advice at their command, were under a misapprehension of the law, a petty employee may foe excused if he was under a similar impression. The Railway failed to convince the learned Judge in appeal, after a full hearing, that this was not a fit case for condonation of delay. I am not inclined to interfere with the discretion of the Judge.”

14. The fact remains that the Management after receipt of the award dated 07.02.2006 along with certificate of publication, failed to implement the award, however filed a petition before this Court which was dismissed in default vide order dated 25.02.2009. Neither the respondent / Management got restored the same nor implement the award intentionally and deliberately and put the petitioner in lurch. Moreover, the petitioner served a notice of demand through his Counsel upon the Management on 20.03.2009 by Courier which was duly served upon the Management. Despite, they failed to implement the award dated 07.02.2006.

15. In addition, in an application under Section 15 delay has been explained which has been ignored by the Labour Court.

16. Section 15 (2) merely requires that the applicant should satisfy the Authority that he has sufficient cause for not making the application within the prescribed period. The Payment of Wages Act does not prescribe that an application under Section 5 of Limitation Act has to be moved.

17. Keeping in view the above discussion, the order dated 28.02.2013 is hereby set aside.

18. Accordingly, the respondent is directed to pay the back wages with 9% interest on the delayed payment within four weeks from the receipt of this order. Failing which the respondent shall be liable to pay 12% interest from the date of the award till deposit of the amount. .

19. The petition is allowed accordingly.

SURESH KAIT, J

NOVEMBER 07, 2014

Rb/jg