

| Sl. No | Date | Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures | COURT'S OR JUDGES'S ORDERS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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|        |      |                                                                                                  | <p>WPMS No.1997 of 2011<br/> <u>Hon'ble Sharad Kumar Sharma, J.</u></p> <p>Mr. Vijay Kumar Chauhan, Advocate, holding brief of Mr. Pradeep Kumar Chauhan, Advocate, for the petitioner.</p> <p>Mr. Devesh Ghildiyal, Brief Holder, for the State of Uttarakhand.</p> <p>The proceedings under the Payment of Wages Act, by way of a Case No.13 of 2010, "Sarva Sri Mobin and others Vs. Shri Rakesh Chauhan", stood instituted before the Presiding Officer, under the Payment of Wages Act/ Assistant Labour Commissioner, wherein, the claimant/respondent, herein, have prayed for, that since they have worked with the petitioner in the construction of his residence, for the period from 04.05.2004 to 25.08.2004, but the wages which was payable to them was not remitted, and consequently, they have prayed for, that the employer, therein, may be summoned and they may be paid with the wages due against the employer, to the workmen.</p> <p>The proceedings, thus, instituted by the workman/respondent on 01.10.2009. The notices were issued to the employer/petitioner, herein, and the employer/petitioner despite of the service of the notice by refusal, has not put in appearance to contest the proceedings on merit, and the relevant observations to the said effect has been</p> |

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|  |  | <p>made by the learned Assistant Labour Commissioner, by observing that the registered notice, which was sent to the petitioner, was refused to be accepted.</p> <p>It needs no elaborate reference, that when there is a refusal to accept the notice, there will be a deemed presumption of service of the notice. In the absence of the petitioner availing the opportunity to contest the proceedings on the merits, the Assistant Labour Commissioner had no other option, except to proceed with the matter ex parte on its merits. Consequently, by the judgment of 04.01.2011, the application preferred, by respondent workmen under the Payment of Wages Act, was allowed, and consequently, the petitioner was levied with the payment of wages of Rs.44,000/- in relation to the private respondents, herein.</p> <p>The petitioner has contended that he could gather the knowledge of the order of 04.01.2011 only, when the recovery proceedings was drawn against him by the respondent, and when the Ameen visited their places, and then to when they have scrutinized the records and filed an application for recall. The said recall application as preferred by the present petitioner has been rejected, by the court of Assistant Labour Commissioner, by an order dated 07.09.2011.</p> <p>The reason for rejection of the application for recall, as preferred by the applicant was on the ground that the recall application as preferred</p> |
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|  |  | <p>by the petitioner seeking recall of the judgment dated 04.01.2011, was not supported with the delay condonation application, and as such, until and unless there is a request made for condoning the delay, the recall itself would not be sustainable.</p> <p>What is peculiar in this case is, that even when the Ameen had visited their place on 10.08.2011, when they got the knowledge of the order of 04.01.2011, and when they had filed the recall application, the presumption would be that they had the knowledge of the order dated 04.01.2011 at least, when they have scrutinized the records after the visiting of Ameen, for the recovery of the amount and thus the knowledge and the reasons for proceeding ex parte against them, as observed in the order dated 04.01.2011, would be a natural corollary, which will be falling, that they had the knowledge in what manner the court has proceeded ex parte when it has observed that the present petitioner has refused to accept the notices sent by the Court.</p> <p>What is more surprising is that when the petitioner has filed the recall application, there is no averment made in it, either in the application or the affidavit filed in support thereto, that the so-called observation made by the learned Assistant Labour Commissioner, the report that, that there was a service by refusal, the factum of the service by refusal is not denied or contested in the recall application.</p> |
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|  |  |  | <p>Hence, the rejection of the recall application, and the argument, as extended by the learned counsel for the petitioner do not call for any interference under Article 227 of the Constitution of India. The writ petition lacks merit, and the same is accordingly dismissed.</p> <p>The amount, thus, deposited by the petitioner would be ensured to be disbursed to the private respondents, by the court of Assistant Labour Commissioner, in their respective ratio of entitlement.</p> <p>(Sharad Kumar Sharma, J.)<br/>20.09.2023</p> <p>NR</p> |
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