

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.428 of 2015

Along with

Interlocutory Application No. 2005 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 2706 of 2012

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M/s Daya Engineering Works (Poles) Pvt. Ltd. 187, Anugrahpuri Colony, Gaya
through its authorized Secretary, Sheo Shankar Yadav.

.... Appellant/s

Versus

1. The State of Bihar through The Principal Secretary - Cum - Commissioner,
Department Of Labour, Employment And Training, Government Of Bihar,
Patna
2. The Presiding Officer - Cum - Chairman, Labour Court Dalmianagar, Town and
District Rohtas
3. The Deputy Labour Commissioner, Magadh Range, Gaya
4. The Labour Superintendent, Gaya
5. Grish Saran Sinha S/O Prasad Narayan Sinha, R/o Kumar Colony, P.S.
Kotwali Town and District Gaya

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s	:	Mr. Prashant Pratap with Mr. Gyan Shankar, Advocates

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 30-08-2016

Re.: Interlocutory Application No. 2005 of 2015

The application is for condonation of delay of 150 days
in filing of the appeal.

For the reasons mentioned in the application, we find
that sufficient cause is made out for condonation of delay.
Consequently, the delay of 150 days in filing of the appeal is
condoned.

Interlocutory Application stands disposed off.

Re.: Letters Patent Appeal No. 428 of 2015

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 13.08.2012 whereby the writ petition filed by the appellant directed against an award dated 23.11.2007 was dismissed on account of delay and laches.

The appellant herein discharged the services of the workmen on 06.06.1995 on the allegation that he has committed fraud and dishonestly retained a sum of Rs. 800/- and used the said amount for his personal needs. While discharging the services of the workmen, the appellant sent a sum of Rs. 3,588.00/- towards earned leave of 30 days and one month notice pay. Aggrieved against the action of the Management in discharging the services of the workmen, an Industrial Dispute was raised under Section 10 of the Industrial Disputes Act, 1947 and was referred for adjudication to Labour Court, Dalmianagar. The Labour Court answered the reference in favour of the workmen granting reinstatement of service of the workmen with full back wages. Such award was published on 15th March, 2008.

The writ petition was filed before this Court in the year 2012 against the award published on 15th March 2008. The said writ petition was dismissed on the ground that it was filed after five years

of delay in disputing the award and, thus, it suffers from delay and laches.

Learned counsel for the appellant has raised the following arguments:

(i) That the Labour Court proceeded *ex-parte* against the Management and the appellant was not aware of the award and the publication, therefore, the learned Single Bench has erred in law in dismissing the writ petition on the ground of delay.

(ii) That though the award (Annexure-4) records the presence of the counsel for the Management but such presence was not after a due participation in the proceedings. Therefore, mere appearance of the name of the counsel in the award cannot be treated to be an award after granting due opportunity to the Management.

(iii) That the award has not been published in terms of Rule 33 of the Industrial Disputes (Bihar) Rules, 1961 (hereinafter referred to as the 'Rules') which contemplates publication of the award after informing all the parties concerned. Rule 33 of the Rules reads as under:

“ 33 Publication of reports and awards- (1) The receipt of every report by a Board or award of a Labour Court or Tribunal shall be acknowledged by the State Government.

(2) Within 30 days of the receipt of the report or award by the State government, the Board, Labour Court or

Tribunal shall publish the report by pronouncing the report or award in open court and shall also simultaneously arrange to exhibit the same on a notice board or a table at its office set apart for the purpose:

Provided that the Board, Labour Court or Tribunal shall send prior intimation in writing to all the parties concerned in the dispute and to the State Government about the date of pronouncement of the report or award concerned.

(3) The State Government may, where it so considers necessary, also arrange to notify the report or the award in the official Gazette.

(4) When any application is made for copies of any award or document to be furnished on the day on which such application is made, an additional fee equal to one and half of the fees leviable under this rule shall be charged. Such copies should be furnished on the same day and if it is not possible, then on the following day.

(5) Printed copy of an award, decision, etc., published under the authority of the State Government may be certified after comparison with the original of those documents to be true copy thereof, by the Presiding Officer of the Labour Court or Tribunal, as the case may be, or by any other officer authorised by him in this behalf, on presentation of the printed copy of the award, decision, etc., by the party applying for it and on payment of the prescribed fee for such application.”

We have heard learned counsel for the appellant and the State and find no merit in the present Letters Patent Appeal. It is factually incorrect to say that the appellant was not represented before the Labour Court. Before the Labour Court, the appellant has filed its written statement in defence. Therefore, once the Management has



filed its written statement of defence represented by a counsel, the argument that the appellant was not given due opportunity is an argument which is wholly misconceived. Once an advocate for the Management has put in appearance and thereafter absent from the proceeding, it is the counsel or the appellant has to be blamed and not the Labour Court.

The award shows presence of Mr. Ashok Kumar Singh, advocate for the Management. The appellant has not pointed out in the writ petition that the counsel was not present at the time of pronouncing the award or that the Labour Court has not given adequate opportunity during the course of proceedings before it. It is only in a rejoinder, the appellant has produced ad-interim orders passed by the Labour Court. Since no such grievance was raised in the writ petition, the appellant cannot be permitted to urge an argument that the award was pronounced without giving due opportunity to the appellant.

The service of the appellant was discharged on account of misconduct after conducting of domestic enquiry. The appellant has not produced its written statement before this Court from wherein it could be found as to whether, the appellant has sought to prove the misconduct before the Labour Court as well or not. Since the misconduct has not been proved before the Labour Court, the finding

of the Labour Court that the order of discharge is illegal cannot be said to be unjustified.

The argument that notice was not issued before publication of the award is not tenable. Rule 33 of the Rules contemplates prior notice about the date of pronouncement of the report or award concerned. It is thereafter the award is published. Therefore, Rule 33 of the Rules contemplates notice before pronouncement of the award and not before publication. The appellant would be deemed to have notice of the proceedings when it was being represented by an Advocate. Non-appearance of the representative of the appellant is not lack of notice. The argument of learned counsel for the appellant is not tenable in this respect.

The fact remains that the award dated 23.11.2007 was published on 15th March, 2008 but the same was challenged in a writ petition filed in the year 2012. The writ petition suffers from delay and laches and has been rightly dismissed by the learned Single Bench.

Another argument raised by learned counsel for the appellant that the award was required to be published within one month but the same has been published after two months as the State Government was informed of making of the award on 06.12.2007.

We do not find that the time fixed for publication of the

award is mandatory. The publication of the award is a ministerial function and therefore, such provision is directory in nature. There is no mandate that if an award is not published within 30 days, it will be bound to be ineffective and unenforceable. Therefore, the provision of sub-rule (2) of Rule 33 of the Rules is directory provision as there is no consequences contemplated of non-publication of the award within 30 days. In any event, the appellant has not suffered any prejudice on account of delayed publication of the award.

In view thereof, we do not find any merit in the present Letters Patent Appeal and the same is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/P.Kumar

AFR/NAFR	NAFR
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