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

+ LPA 507/2016

MANAGEMENT OF CPWD Appellant
Through Mr. Ruchir Mishra, Advocate.

versus

ANAND KUMAR GAUTAM & ANR Respondent
Through Ms. Sija Nair Pal, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% **05.10.2016**

The appellant-Union of India described as Management of the Central Public Works Department has filed the present intra-Court appeal impugning order dated 17th August, 2016 passed by the Single Judge, whereby C.M.No. 21215/2016 filed for restoration of W.P. (C) No. 6799/2007 has been dismissed.

2. With the consent of the learned counsel for the parties the appeal is taken up for hearing and final disposal.

3. The appellant herein had filed W.P. (C) No. 6799/2007 impugning Award dated 21st February, 2007 passed by Industrial Tribunal. The writ petition was admitted for regular hearing on 23rd February, 2012.

4. The writ petition had come up for hearing in the regular list on 23rd November, 2015. As none had appeared, it was directed that the matter would remain on the board. The writ petition was then taken up for hearing on 3rd December, 2015, on which date it was dismissed for non-prosecution. Thereafter, the appellant received a legal notice dated 11th April, 2016 from the respondents-workmen. It is the case of the appellants that they then came to know that W.P. (C) No. 6799/2007 had been dismissed. Accordingly, the application for restoration, C.M. No. 21215/2016, was filed on 3rd May, 2016.

5. In the impugned order dated 17th August, 2016, the learned Single Judge has cited two reasons for rejecting the application for restoration. Firstly, the writ petition was dismissed in default earlier also on 12th May, 2011 and was then restored. Secondly, the matter was shown in the cause list which uploaded and accessible on the Court's website. The appellant could have ascertained the status of the case in the cause list. Recording the above, the argument that the name of the counsel for the appellant was not shown in regular list and, therefore, he could not ascertain that the writ petition had come up for hearing in the regular list, was rejected.

6. We are inclined to allow the present appeal because the cause list did

not mention the name of the appellant's counsel. Pertinently, the writ petition had remained pending in the regular list from 2012 and had come up for hearing in the month of November, 2015. It does become difficult and impracticable to keep track of cases when they come up for hearing after one, two or more years. We feel that the appellant has been able to show reasonable cause for non appearance on 23rd November, 2015 and 3rd December, 2015, for the name of the appellant's counsel was not shown in the regular list. While it is true that the cause list is available on the Court's website, but it is almost impossible for any lawyer to scan through each and every case in the cause list to ascertain whether an admitted case has come up for hearing in the regular list. Search is normally done by entering the name of the Advocate. The appellant herein is a department of the Government of India and possibly did not themselves check the cause list on each day to see whether or not the case in question had come up for hearing. This was the responsibility of the counsel, to whom the case was marked. The error and mistake of the counsel and the appellant is not of such grave nature that the application for restoration should have been dismissed.

7. However, there is a difficulty in the present case. The appellant should have filed a separate application seeking condonation of delay. We

were inclined to restore the matter to the board of the Single Judge, with permission to the appellant to file an application for condonation of delay for examining the question of delay. However, learned counsel for the respondents-workmen states that in view of the facts stated above, she would pray that the writ petition should be disposed of on merits at the earliest by the Single Judge. She submits that the delay is not objected to and she would not insist that the appellant should file an application for condonation of delay. We appreciate the concession given by the counsel.

8. To cut short the delay, the parties will appear before the single Judge on 7th November, 2016.

9. With the aforesaid observations, the appeal is allowed. The writ petition is restored to its original position. There will be no order as to costs.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

OCTOBER 05, 2016
NA