

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**C.M. Nos. 3368-39-CWP of 2016 in/and
R.A. No. 84-CW of 2016 in
CWP No. 9220 of 2002
Date of decision: 25.01.2018**

Municipal Council, Pathankot and others

....Petitioner(s)

Versus

Presiding Officer, Labour Court and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Arun Abrol, Advocate,
for the applicant-respondent no. 2.

Mr. B.S. Taunque, Advocate,
for the non-applicant-petitioners.

G.S.SANDHAWALIA, J. (Oral)

The present review application i.e. R.A. No. CW-84-2016, which is barred by 173 days in filing and 1 year and 46 days in refiling, has been filed on the ground that at the time of the final decision on 26.05.2014, the application under Section 17-B of the Industrial Disputes Act, 1947 (in short 'the Act') was not decided.

It is not disputed that the final order passed by this Court whereby relief was granted of Rs.1,00,000/- as compensation plus Rs.10,000/- as costs on account of the fact that the workman had served for 2 years and would be adequate was challenged before the Division Bench in LPA No. 1716 of 2014. The appeal was withdrawn with liberty to press for deciding the application under Section 17-B of the Act on 09.12.2014.

As noticed, initially, there was a delay of 173 days as the

application for review was only filed on 15.12.2014. Resultantly, keeping in view the fact that the matter had been challenged before the Division Bench, sufficient cause as such has been shown to condone the delay in filing the appeal. Accordingly, C.M. No. 3368-CWP of 2016 for condoning the delay of 173 days in filing the review application, which has gone uncontroverted, is allowed and the delay in filing the review application is condoned.

However, when the review application was returned, delay of 1 year and 46 days has taken place in refiling the same. The only explanation given is that the clerk of the counsel had put the file in a bundle of decided cases. It is to be noticed that for a period of whole year of 2015, no explanation has been given as to whether the workman-applicant ever contacted the counsel to find out about the fate of his review application and the delay as such cannot be held to be justified in any manner. 40 days limitation is provided under the High Court Rules and Orders. This Court in ***Mohinder Pal vs. General Public and another, 2017 (1) Law Herald 483*** has held that inordinate delay as such without appropriate explanation cannot be condoned at the asking. Resultantly, this Court is of the opinion that the delay in refiling the review application is not liable to be condoned and C.M. No. 3369-CWP of 2016 is dismissed.

Coming on the merits, this Court is of the opinion that no case is made out for passing any orders on the application under Section 17-B of the Act. It is to be noticed that the appointment was made in July, 1993 and the workman worked till 30.08.1995. He chose to issue the demand notice on 30.01.1997 and the award was passed on 23.01.2001, which was

challenged by the petitioner-establishment. The writ petition was only admitted on 10.03.2006. During the period of 5 long years, no effort was made to file an application under Section 17-B of the Act when the matter remained in motion hearing.

Only when the writ petition was admitted, the operation of the award was stayed subject to the compliance of provisions of Section 17-B. A perusal of the application under Section 17-B would go on to show that for another period of 7 years, no application was filed and the application dated 18.11.2013 was made wherein, a bald averment has been made that the respondent-workman was not employed in any establishment. The same was denied by filing reply wherein, specifically, it was mentioned that the application was filed after 11 years and 5 months and there is no iota of evidence to show how the workman had survived for those 11 years and 5 months. Section 17-B provides that the wages had to be paid if the workman had not been employed in any establishment during such period. As noticed, necessary affidavit in compliance of Section 17-B is dated 18.03.2013. It is hard for this Court to digest this fact that for all this long period, the workman remain unemployed. The judgments referred to by counsel for the appellants in *Workmen repled. by Hindustan Vegetable Oils Corporation Ltd. vs. Hindustan Vegetable Oils Corporation Ltd., 2000 (5) SLR 218; Municipal Committee, Mohindergarh vs. POLC, Gurgaon, 2003 (1) SCT 726; M/s. Yamuna Gases and Chemicals Ltd. vs. Satnam Singh and others, 2009 (3) SLR 390* and *Dena Bank vs. Kiritikumar T. Patel, 1998 (1) SCT 57* would, thus, not be applicable in the facts and circumstances of the case.

In such circumstances, this Court is of the opinion that the application seeking review as such on this ground is without any basis and the same is dismissed being time barred and on merits also.

25.01.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No