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

% *Date of Judgment: 02.04.2018*

+ **W.P. (C) 3070/2018**

SH. ASHWANI KUMAR AND ORS. Petitioners

Through: Mr.Zaryab J. Rizvi, Advocate with
Ms.Firdouse R.Wani and Ms.Ishita Nagpaul,
Advocates.

versus

M/S INSTITUTE OF HOTEL MANAGEMENT, CATERING
AND NUTRITION, PUSA AND ANR. Respondents

Through: Ms.Deepika Marwaha, Advocate
with Ms.Worthing Kasar and Ms.Raunika
Johar, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

CM No. 12215-12217/2018 (exemptions)

Exemptions allowed subject to all just exceptions.

The applications stand disposed of.

W.P. (C) 3070/2018

1. The petitioners have invoked the writ jurisdiction of this court under Article 226 of the Constitution of India for issuance of a direction in the nature of mandamus or any other writ for setting aside the Award dated 26.03.2015 passed by the learned

Presiding Officer, Labour Court-XVII, Karkardooma Courts, Delhi (hereinafter referred to as 'Industrial Adjudicator') in case ID No. 77A/08 while answering the reference assigned by the Government of NCT of Delhi dated 05.05.2008 against them.

2. On an advance copy of the petition having been served, Ms. Deepika Marwaha, Advocate appears for the respondent no.1/management.
3. Impugned award dated 26.03.2015 has been assailed in this writ petition in March, 2018. There is absolutely no plausible explanation offered by the petitioner for the exorbitant and abnormal delay of about three years in approaching this court. Though no period of limitation is prescribed for filing a petition under Article 226 of the Constitution of India but there is no rule of universal application for condonation of delay. Though, there may be no period for limitation prescribed for filing the petition under Article 226 of the Constitution of India yet the person aggrieved should approach the court without loss of time and if there is a delay, the petitioner must offer cogent explanation. The line of decision of the Hon'ble Supreme Court on the issue would be indicative that the courts have evolved self imposed restraints in inquiring into belated or stale claims. One who is tardy, not vigilant and does not seek intervention of the Court within a reasonable time from the date of arising of the cause of action or alleged violation of the constitutional, legal or other right, is not entitled to relief under Article 226 of

the Constitution of India. Since the petitioners have not offered any just explanation in the writ petition, same is held to be barred by time and laches and abnormal delay.

4. Even on merits, it is noted that the following reference was made by the appropriate Government to the Industrial Adjudicator: -

“Whether an employer-employee relationship existed between the M/s. Institute of Hotel Management Catering and Nutrition and (i) Sh.Ashwani Kumar S/o Sh. Jagwat, (ii) Sh.Anuj Kumar S/o Sh. Kiran Pal, (iii) Sh. Dharmender S/o Sh. Vijender, (iv) Sh. Rakesh Kumar S/o Sh. Ravi Chand and (v) Sh. Kuldeep Kumar S/o Sh.Mahavir Prasad (b) and if answer to question (a) above is in affirmative, whether services of said Sh.Ashwani Kumar and 4 others have been illegally and/or unjustifiably terminated by the management; and if yes, to what relief are they entitled?

5. On completion of pleadings, the following issues were framed by the Industrial Adjudicator on 05.05.2009: -

- “1. Whether the workmen prove that they are the employees under the management number 1 and that they have completed 240 days as pleaded by them?
2. Whether the workmen further prove that they were illegally terminated/retrenched from the services w.e.f. 21.04.2006?
3. Whether the management number 2 is not a necessary party to the proceedings as per the terms of reference?
4. Whether the dispute is barred by res-judicata as claimed by management No.1?
5. Whether the management No.1 proves that the workmen are the employees of management No.2 and thus there is no relationship of employer and employee between the workmen and management No.1?
6. What relief the workmen are entitled for?”

6. In order to prove their case all the petitioners stepped into the witness box. They deposed in their respective testimonies that they were appointed as helper and cook on 28.09.2004, 01.02.2005, 08.04.2004, 01.04.2004 and 13.08.2005 respectively with respondent no.1 on verbal orders of its Principal. They stated that when they demanded the appointment letters, the services of the petitioner Rakesh Kumar were terminated on 01.12.2005 and services of other petitioners were dispensed with on 21.04.2006. They also deposed that they had approached Central Administrative Tribunal (in short 'Tribunal') by filing OA No.2794/2005 on 14.12.2005, which was dismissed on 21.04.2006 as they have failed to prove that they were the employees of respondent no.1. However, one of the petitioners Anuj Kumar deposed in his cross-examination that they had moved the Tribunal twice. He admitted that they had not challenged the orders of the Tribunal as there was a direction to move to the appropriate forum.
7. It is not disputed that all the five petitioners had filed OA No. 2794/2005 before the Tribunal praying for the similar benefits as given to Sh.Sheesh Pal, Store Attendant.
8. The respondent no.1 specifically pleaded that there was no relationship of employer and employee between them as the petitioners were the employees of M/s. Sybex Computer Systems (P) Ltd. i.e. respondent no.2, which was not a party before the Tribunal. Admittedly, the OA No. 2794/2005 was

dismissed by the Tribunal by a detailed order on merits on 21.04.2006. The Tribunal observed that the salary, PF, ESI contribution etc. were being paid to the petitioners by M/s. Sybex Computer Systems (P) Ltd. The respondent no.2 had also addressed a letter to the respondent no.1 whereby 13 persons were sent to the respondent no.1 for clerical and kitchen services. The Tribunal found from the documents on the record that all the petitioners are the employees of the contractor and therefore there was no relationship of master and servant between the petitioners and the respondent no.1 and the OA was dismissed being misconceived and not maintainable.

9. Learned counsel for the petitioner submits that before dismissal of the OA No. 2794/2005 on 21.04.2006, the petitioners filed another OA No. 866/2006 on 20.04.2006 against the respondent no.1 and the subsequent OA was permitted by the Tribunal to be withdrawn with the liberty to approach the appropriate forum. The Industrial Adjudicator has noted that the petitioners did not place on record the copy of the petition of OA No. 866/2006 to show that what facts were pleaded by them and what relief was sought.
10. He emphasised that the Tribunal had no jurisdiction to decide the issue raised in OA No. 2794/2005 and as such, there was no question of *res judicata*.
11. In fact, the petitioners have themselves approached the Tribunal and submitted themselves to its jurisdiction and thereafter they

cannot be allowed to say that OA was decided by the Tribunal without any jurisdiction. Admittedly, the OA No. 2794/2005 was decided on 21.04.2006 by the Tribunal on merits after hearing both the parties and the order dated 21.04.2006 was never challenged before the court in writ jurisdiction and has attained finality.

12. The Industrial Adjudicator has relied upon the judgment of this court in **N.K. Anand and Anr. vs. Union of India & Ors., W.P. (C) 4875/2000** and of the **Hon'ble Supreme Court in Pondicherry Khadi and Village Industries Board vs. P. Kulothangan and Anr., AIR 2003 SC 4701**, and has rightly come to the conclusion that the dispute between the parties is barred by the principles of *res judicata* as the order dated 21.04.2006 was never assailed by the petitioners before this court in the writ jurisdiction and has attained its finality. Even if in the subsequent OA No.866/2006, the petitioners were permitted to approach the appropriate forum, the order dated 21.04.2006 was never set aside and it is admitted by the learned counsel for the petitioners that even the notice was not issued to the respondent no.1 before giving them the liberty to approach the appropriate forum.
13. Therefore, even on merits, I do not find any illegality or infirmity in the impugned Award dated 26.03.2015 passed by the Industrial Adjudicator. As such the petition is dismissed.

14. In view of the above, the application, being CM No. 12218/2018, also stands dismissed.

(VINOD GOEL)
JUDGE

APRIL 02, 2018
"shailendra"

