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

Date of Decision :- 06.11.2019

+ W.P.(C) 8266/2018

ASHOK HOTEL (UNIT OF ITDC) THROUGH ITS GENERAL
MANAGER Petitioner

Through: Mr. Anish Chawla, Mr. Neeraj Kumar
and Ms. Aadya Chawla, Advs.

versus

SHRI ADITYA PRASAD NAYAK THROUGH ASHOK HOTEL
EMPLOYEES UNION Respondent

Through: Mr. K.C. Nayak, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the management seeks to assail the order dated 16.04.2018 passed by the learned Authority under the Minimum Wages Act, 1948 in Claim Application No.MWA 138/2016. Under the impugned order, the petitioner has been directed to pay a sum of Rs. 67,546/- to the respondent along with compensation of Rs.50/- towards unpaid salary.

2. The impugned order is sought to be assailed primarily on the ground that since the claim made by the respondent workman was for the period between 08.12.2013 and 18.04.2014, the claim was liable to be rejected on the ground of limitation as it had been filed beyond the statutory period of six months that too without filing any

application seeking condonation of delay. Learned counsel for the petitioner submits that the claim was filed in September, 2015 which was clearly beyond the six months' period of limitation prescribed under Section 20 of the Minimum Wages Act, 1947 ('the Act'). He submits that this belated claim petition moved by the respondent without even seeking condonation of delay, could not have been without the competent authority having any occasion to examine whether any case had been made out to condone the delay in filing the claim. In support of which contention he places reliance on the decision of this Court in **Jammu and Kashmir Bank Ltd. vs. Digvijay Cement 154 (2008) DLT 80**, the decision of the Karnataka High Court in **Banglore Metropolitan Transport Corporation Vs. The Deputy Labour Commissioner, 2008 (117) FLR 1172** and the decision of the Bombay High Court in **Mathuradas Mohota College of Science vs. R.T. Borkar and Ors. 1996 (98) BOMLR 718**.

3. On the other hand, learned counsel for the respondent submits that the respondent's claim was not time barred as the petitioner was habituated to making belated payments of overtime allowance. He submits that since the last payment of overtime allowances, for the period after 08.12.2013, had only been made in March 2015, The cause of action for claiming overtime continued till March, 2015. Therefore, the claim, having been filed in September 2015, was well within the statutorily prescribed period of six months for preferring a claim and was, well within the period of limitation prescribed in Section 20 of the Act. He further submits that since the plea of the claim petition being barred by limitation was never raised by the

petitioner before the competent authority, the respondent had no occasion to address this plea or file an appropriate application or documents to show that his claim was within limitation or in any event the delay, if any, was liable to be condoned. He, however, concedes that the documents which show that the petitioner used to habitually make belated payment of overtime allowance to its employees were not placed for the competent authority before it passed the impugned order and therefore submits that if this court were to agree with the petitioner's contentions, the matter be remanded to the competent authority to enable the respondent to file the requisite application with supporting documents.

4. Before dealing with the rival contentions of the parties, it would be appropriate to refer to Section 20 (2) of the Act which deals with filing of a claim by an employee and the same reads as under:

Section 20(2)

“Where an employee has any claim of the nature referred to in sub-section (1)], the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub-section (1), may apply to such Authority for a direction under sub-section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages³² [or other amount] became payable:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.”

5. Since, it is the plea of the petitioner that the respondent did not even aver in his claim statement that there was any reason for filing a belated claim in respect of demand for the period between 08.12.2003 to 18.04.2014 it would be appropriate to refer the averments of the respondent in para Nos.5 to 12 of its claim petition filed by the respondent before the competent authority and the same reads as under:-

“5. That, the compensatory off given by the management is in violation of S-8 of the Delhi Shops and Establishment which provides payment of overtime @ double the wages for any extra work done by the workman.

6. That, the management has even refused to grant compensatory off/extra off, in lieu of the extra duties done by the workman since 08.12.13 till date.

7. That, the workman submitted a representation dt. 16.02.15 (Annexure-1) and reminder dt. 28.05.15 (Annexure-2) to the Chief (HR), The Ashok Hotel, in this matter but nothing has been done, as per his demand notice dt. 16.07.15 of the workman.

8. That, the workman has received a reply to the RTI application dt. 30.05.15 (Annexure-3) mentioning that the Compensatory offs were not permissible, without quoting any provisions of the law or rule under which it is not permissible, in this matter.

9. That the workman is entitled for payment of overtime wages for the extra duties of more than 8 hrs done by him as per the list submitted by him along with the demand notice dt. 16.07.15 as per S-8 of the Delhi Shops & Establishment Act.

10. That, the refusal to pay overtime in lieu of the extra duty of more than 8 hrs done by the workman, as above, by the management is in violation of S-8 of the Delhi Shops & Establishment Act.

11. That, the union served the demand notice dt. 12.08.15 (Annexure-4) for demand for payment of overtime to the workman

as above.

12. That, the management of the Ashok Hotel has not given any response to the demand notices dt. 16.07.15 served by the workman and demand notice dt. 12.08.15 served by the union.”

6. The proviso to Section 20 (2) of the Act, makes it is evident that although any claim under this section has to be made within six months from the date on which the said amount becomes payable, the competent authority has the power to admit any claim after the prescribed period if it is satisfied that the claimant had sufficient and bonafide cause for making the claim belatedly. In the present case, the claim statement filed by the respondent shows that even though his claim for overtime allowances payable to him for the period from December, 2013 onwards was raised only in September, 2015, neither did he explain his reasons for making the claim after the statutorily prescribed period of six months, nor did he make any prayer for seeking condonation of delay in filing the claim.

7. There is therefore merit in the petitioner’s contention that even if the respondent had a just cause for making a belated claim, the competent authority could not have considered the same without the respondent seeking condonation of delay in making its claim. In these circumstances, when the respondent is unable to dispute that no averment or prayer seeking condonation of delay had been made before the competent authority, this Court has no other option but to set aside the impugned order which prima facie shows that the claim of the respondent was barred by limitation.

8. However, keeping in view the fact that no plea of limitation

was taken by the petitioner before the competent authority, the respondent was deprived of the opportunity to reply to the same by moving an appropriate application for condonation of delay. Therefore, it would be in the interest of justice to grant the respondent an opportunity to seek condonation of delay in accordance with the second proviso to Section 20 (2) of the Act.

9. The impugned order is accordingly set aside and the matter is remanded back to the competent authority for fresh adjudication in accordance with law. The respondent is granted two weeks' time to file an appropriate application seeking condonation of delay with all supporting documents and the petitioner will be entitled to file its reply thereto. While remanding the matter back, the competent authority is requested to decide the matter expeditiously and preferably within a period of six months. The parties are directed to appear before the competent authority through their respective Authorised Representatives on 29.11.2019.

10. The petition is disposed of in the aforesaid terms.

11. In the peculiar facts of the present case, the amount deposited by the petitioner before this Court will be retained till final adjudication of the respondent's claim by the competent authority; the release thereof would be subject to the outcome of the fresh adjudication by the competent authority.

REKHA PALLI, J.

NOVEMBER 06, 2019

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