

28.08.2023

Ct. No.12

Sl. No.11

NAREN

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 415 of 2020

with

IA No. CAN 1 of 2019

with

IA No. CAN 3 of 2023

with

IA No. CAN 4 of 2023

Ajay Kumar Mondal.

Vs.

M/s. Anglo India Jute Mills Co. Ltd. & Ors.

Mr. Balai Ch. Paul,
Mr. Debanshu Ghorai ... For the appellant.

Mr. Anant Kr. Shaw,
Mr. Ravi Kumar Dubey ... For Respondent
no.1.

Re: I.A. No.CAN 3 of 2023

This is an application for recalling of the order dated 11th September, 2019 passed in MAT 1388 of 2018 (FMA 415 of 2020) by which the present appeal was dismissed as withdrawn.

We have perused the averments made in the application and find sufficient cause has been shown in the application so as to recall the order dated 11th September, 2019.

Accordingly, for interest of justice, we recall the order dated 11th September, 2019 and restore the file to its original file and number.

The application being I.A. No.CAN 3 of 2023 is allowed.

Re: I.A. No.CAN 4 of 2023

This is an application for condonation of delay of 2416 days in filing the present appeal.

Having heard the learned counsel for the parties and having also perused the affidavit filed in support of the application, we are satisfied that sufficient cause has been shown for not preferring the appeal within the period of limitation.

Hence, for interest of justice, the application being I.A. No.CAN 4 of 2023 is allowed and the delay in filing the appeal is condoned.

The present appeal is filed challenging the two orders dated 14th December, 2015 passed in writ petition being C.O. No.15517(W) of 1996 and the order dated 14th September, 2018 passed in CAN No.4107 of 2016 arising out of C.O. No.15517(W) of 1996.

The appellant was an worker in the first respondent / mill, was dismissed from service on 19th March, 1985. Non-employment of the appellant was

referred by the third respondent on 2nd September, 1998. The Industrial Tribunal passed an ex parte award dated 24th August, 1995 ordering reinstatement of the appellant with back wages. The first respondent / mill filed writ petition in the year 1996 challenging the award dated 24th August, 1995. The contention of the first respondent / mill in the writ petition is that the third respondent / Industrial Tribunal without any notice to the first respondent passed an ex parte award. The appellant contended before the learned Single Judge that the first respondent was dragging the matter before the third respondent / Industrial Tribunal and hence ex parte award was passed, which is valid and legal.

The learned Single Judge after considering the above submissions of the learned counsel for the appellant as well as learned counsel for the first respondent and materials on record found that notice under Rule 22 of Industrial Disputes Rules, 1958 to be issued to the first respondent was not issued to the first respondent before passing award. The learned Single Judge considering the fact that the appellant was dismissed from service on 19th March, 1985, reference was made on 2nd September, 1988, award was passed on 24th August, 1995 and the writ petition was pending from the year 1996, held that if award is set aside, great injustice would be caused to the appellant. In view of the

said stand, the learned Single Judge instead of setting aside the entire ex parte award, set aside only the portion of the award granting back wages.

The appellant was paid wages as per Section 17B of the Industrial Disputes Act till 2009 even though he was superannuated in the year 2008 itself. The learned Single Judge taking note of the Computation Case No.14 of 2010 filed by the appellant to determine the amount directed the Industrial Tribunal to determine the amount paid and payable, if any, by the first respondent to the appellant under Section 17B in accordance with law.

The appellant filed one application being CAN No.4107 of 2017 before this Court to review the said order dated 14th December, 2015 passed by the learned Single Judge in the writ petition. During hearing of the review petition, the counsel for the first respondent offered Rs.30,000/- to the appellant as full and final settlement. Learned counsel appearing for the appellant did not accept the same. The learned Single Judge held that there is no error apparent in the order dated 14th December, 2015 or an accidental slip by the court in the order passed in the writ petition and the remedy is only to file the appeal. The learned Single Judge after holding so dismissed the review petition giving option to the appellant to accept Rs.30,000/- in full and final settlement of all the claims as offered by the learned

counsel for the first respondent. The learned Single Judge also held that if there is no acceptance by the appellant, the review petition stands dismissed automatically.

Challenging both the orders dated 14th December, 2015 and 14th September, 2018, the appellant has come out with present appeal. Pending this appeal, this Court directed the appellant to challenge the order passed in the writ petition as well as the order passed in the review petition being CAN No. 4107 of 2016 by filing two separate appeals. The appellant filed MAT 293 of 2021 and MAT 294 of 2021 challenging the two orders and dismissed the present appeal as withdrawn. When two appeals being MAT 293 of 2021 and MAT 294 of 2021 are taken up for hearing, another Division Bench directed the appellant to file application to restore the present appeal as he has to file one appeal challenging both the orders. As such, the present appeal is taken up for hearing.

The appellant raised various grounds in the present appeal. The main ground of challenge is to set aside the portion of the award granting back wages. The appellant will not get any amount as first respondent paid entire 17B wages and the appellant should not be penalized for no fault on his part. The appellant has filed computation petition to determine the back wages and

the same is pending before the Labour Court. The appellant is entitled for back wages.

Heard the learned Advocates appearing for the parties and perused the materials on record placed before us.

The first respondent has filed the writ petition being C.O. No.15517(W) of 1996 challenging the ex parte award dated 24th August, 1995 granting back wages passed by the third respondent on the ground that no notice was served on the first respondent before passing award. The learned Single Judge verifying and considering the materials on record placed before him found that no notice was served as contemplated in Rule 22 of the Industrial Disputes Rules, 1958, set aside the portion of the award granting back wages to the appellant and modified the portion of the award. The Learned Single Judge has taken lenient view favouring the appellant in the interest of justice as the issue of non-employment is pending from the year 1985. The award was not set aside in toto only in view of the lapse of time from the year 1985 onwards.

Considering the materials on record and the order of the Learned Single Judge, who has granted relief to the appellant in the interest of justice, we hold that there is no reason to interfere with the order passed by the learned Single Judge.

In the result, the present appeal is dismissed.

No order as to costs.

(V. M. Velumani, J.)

(Rai Chattopadhyay, J.)