

November 11, 2024
Sl. No. A 104
Court No.5
s.biswas

CO 896 of 2024

M/s. MHC Conveying Systems Pvt. Ltd.
vs.
Arijit Ghoshal

Mr. Dyutimoy Paul
Mr. Vikas Baisya
Ms. Ranjana Seal

... for the petitioner

1. Challenging the orders dated 6th December, 2022 and 15th September, 2023 passed by the Referee, Joint Labour Commissioner (P), Bidhannagar, North 24 Parganas in Case No.Pay-27/22 (M/s MHC Conveying Systems Pvt. Ltd. Vs. Shri Arijit Ghoshal), the revisional application has been filed.
2. The learned advocate representing the petitioner by drawing attention of the court to the order dated 6th December, 2022 would submit that the Referee, Joint Labour Commissioner (P), Bidhannagar, North 24 Parganas, had exceeded her jurisdiction in admitting the petition by condoning the delay thereby, disregarding the objections raised, to the application under Section 5 of the Limitation Act. He would submit that ordinarily an application for payment of recovery of wages, filed in Form-N in terms of Rule 31 of the West Bengal Shops and Establishment Rules 1964, is required to be filed within the prescribed period as provided in Section 14 of the West Bengal Shops

and Establishment Act, 1963 (hereinafter referred to as the “said Act”). He would submit that an application filed beyond the prescribed period can only be admitted provided the applicant satisfies the officer or the authority that he had sufficient cause for not making the application within the prescribed period.

3. Accordingly, it is submitted that it was obligatory on the part of the Referee to provide appropriate reasons while accepting the claim application especially when serious objections had been raised by the petitioner. He would submit that the Referee had, by a cryptic observation and by recording, refusal to condone the delay for the instant case would have been denial of justice to the applicant at the very threshold of the matter, had proceeded to accept the same.
4. This, according to the learned advocate representing the petitioner, does not constitute the satisfaction on the part of the officer for accepting the claim application filed belatedly. According to the learned advocate, though a review application had been filed, the Referee had proceeded to dismiss the same.
5. Having heard the learned advocate for the petitioner, I find that Section 14 of the said Act enables any person employed in shop or

establishment to a right to receive wages payable not later than the 10th day of the month immediately succeeding that in respect of which such wages are payable. Sub-Section (2) of Section 14 provides that wherein deduction has been made from the wages of the persons employed in shop or establishment or any payment of wages to such person has not been made within the date referred in Sub-Section (1) such person may, within a period of six months from the date on which the deduction from the wages was made or from the date referred to in Sub-Section (1), as the case may be, make an application to such officer or authority as the State Government may, by notification, appoint in this behalf, for an order under Sub-Section (3). By relying on the aforesaid provision, the learned advocate for the petitioner would submit that ordinarily an application ought to have been made within a period of six months. He would submit that although, the proviso to Sub-Section (3) authorises the officer to accept an application belatedly, the same is subject to the satisfaction of such officer or authority that the person had sufficient cause for not taking out the application within such period.

6. The petitioner, however, has not, in course of his argument raised the locus of the opposite party to

maintain the application before the Referee though I find reflection thereof in the order. He, however, claims that the order accepting the claim beyond the time prescribed is a cryptic one and does not disclose the satisfaction of the authority in accepting the same.

7. Having perused the order impugned, I find that the Referee/authority had elaborately heard the parties. It may be noted that the Referee had condoned the delay in filing the belated claim application. The very factum of condonation of delay, in my view pre-supposes the satisfaction on the part of the Referee/authority to accept the belated application. The statute recognises the jurisdiction of the Referee/authority to accept a belated application. Having regard thereto, it cannot be said that the Referee had acted in excess of jurisdiction in accepting the belated application. Insofar as the challenge to the dismissal of review application is concerned, there does not appear that the petitioner had any cogent ground to seek review. The petitioner also could not identify any error apparent on the face of the record. This apart the review was filed belatedly after more than 70 days. The same appears to be an afterthought. I, however, find that the petitioner has raised certain questions, as to the

maintainability of the application on the ground that the opposite party is not a person employed. I find that the Referee has rightly held that the same can only be decided upon admission of the case on merit.

8. The orders do not suffer from irregularity in procedure nor the petitioner could identify any illegality. There is no scope to entertain this revisional application. The same is accordingly, dismissed. There shall be no order as to costs.
9. The referee shall decide the issue without being influenced by the observation of this court.
10. All the parties shall act on the basis of the server copy of the order.

(Raja Basu Chowdhury, J.)