

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Writ Jurisdiction)
W.P. (L) No. 711 of 2022

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M/s. Gaur Auto Center, having its office at Dimna Road, Mango, P.O. - M.G.M., P.S. - Ulidih, Mango, Town – Jamshedpur, District – East Singhbhum (Jharkhand), through its Proprietor, namely, Mr. Bisheswar Gour, son of Late P.C. Gour, resident of House No. 125, Sankho Sai, Dimna Road, Mango, P.O. - Mango, P.S. - Olidih (Mango), Town – Jamshedpur, District – East Singhbhum (Jharkhand).

.... Petitioner

Versus

Mirtunjay Kumar, son of Sri Jagdhari Prasad, resident of Village – Deoghar, Mukhiyadanga, P.O. - Bhilai Pahari, P.S. - M.G.M., Mango, District – East Singhbhum (Jharkhand).

.... Respondent

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through :- Video Conferencing)

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For the Petitioner : Mr. Indrajit Sinha, Advocate.
For the Respondent :

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03/06.04.2022.

Heard, learned counsel for the petitioner, Mr. Indrajit Sinha.

M/s Gaur Auto Center, having its office at Dimna Road, Jamshedpur through its Proprietor, Mr. Bisheswar Gour has preferred this writ petition for setting aside the order dated 13.02.2020 passed by the Presiding Officer, Labour Court, Jamshedpur in B.S.E. Case No. 04 of 2017.

Learned counsel for the petitioner has submitted, that under Section 26(4) of the Bihar (now Jharkhand) Shops and Establishment Act, the prescribed authority may condone the delay in filing such a complaint, if it is satisfied that there was sufficient cause for not making the application within the prescribed time.

Learned counsel for the petitioner has further submitted, that while deciding Issue No. (A) i.e. *Whether the application / complaint being barred by limitation deserves to be entertained after condoning the delay in filing this application?*, at Page Nos. 34 & 35 of the brief and at internal page-4 & 5 of the impugned award dated 13.02.2020, the learned Presiding Officer, Labour Court, Jamshedpur has himself recorded that though in the examination-in-chief of the W.W.-1, nothing specific has come to explain the delay

in filing the application, in cross-examination the documents brought on record in behest of the O.P. M/s Gaur Auto Center particularly, Exhibit – A & B goes to suggest that under wrong advice the applicant moved the Dy. Labour Commissioner for reconciliation and payment of his dues from the O.P.

Learned counsel for the petitioner has further submitted, that this consideration is not a proceeding as defined under Section 2(1) of the Limitation Act, according to which suit does not include an appeal or an application.

Learned counsel for the petitioner has placed reliance upon Section 14(1) of the Limitation Act, which reads as follows:-

“In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”

Learned counsel for the petitioner has submitted that even filing of the application before the Deputy Labour Commissioner for reconciliation is not a ground for condonation the delay as envisaged under Section 14 of the Limitation Act, apart from that, learned Presiding Officer, Labour Court has categorically mentioned that nothing specific has been brought on record by the WW-1 to explain the delay during his examination, as such, condonation of delay in such matter is fatal, which could not be allowed by this Court.

Learned counsel for the petitioner has further submitted, that so far as the fact of the case is concerned, which has been discussed while deciding the Issue No. (C) i.e. Whether the applicant was terminated without notice or had left the job after submitting verbal resignation?

Learned counsel for the petitioner has placed reliance upon para-8 of impugned award and has submitted that everything has been presumed by the learned Labour Court without any material on record and adverse inference has been taken on record by recording that till then, the O.P. Proprietor was in double mind what to mention in the Court as reason behind so called resignation (verbal) of the applicant. On the one hand he mentions failure of the applicant in getting a salary hike from him on the other he attribute his failure to sort out the dispute with Mr. Ravi Ranjan, Service Manager of Bajaj Auto Ltd. is also bad in law.

Let notice be issued upon respondent Mirtunjay Kumar, son of Sri Jagdhari Prasad, resident of Village – Deoghar, Mukhiyadanga, P.O. - Bhilai Pahari, P.S. - M.G.M., Mango, District – East Singhbhum (Jharkhand), under Speed Post, for which requisites etc., must be filed within a period of one week.

Office to track the Speed Post.

Put up this case after receipt of service of notice.

(Kailash Prasad Deo, J.)

Sunil/-