

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
O R D E R

DB Civil Special Appeal (Wit) No. 1439/2012

Date of Order :: 30/3/2013

Hon'ble Mr. Justice Ajay Rastogi
Hon'ble Mr. Justice Arun Bhansali

Dr. Sohan Lal Sharma, for appellant.

Office has pointed out delay of 41 days in filing appeal. However, application u/S. 5 of the Limitation Act for condonation of delay has been filed.

Taking note of the explanation furnished in the application U/s. 5 of the Limitation Act seeking condonation of delay in filing appeal, the application stands allowed.

The matter is heard on merits.

As it reveals from the record that the appellant workmen was retrenched on 30.5.1983 and the appropriate government made reference vide its Notification dt.17.7.2000 and after claim and written statements came to be filed, the case was fixed for plaintiff's evidence as it reveals from the order sheet dt.12.10.2001, however, the appellant filed his examination in chief in the form of affidavit on 26.9.2002 but did could not appear for cross examination and on 13.2.2006 when the employer's representation was present to cross examine

the witness he moved application u/ S. 36 of the ID Act seeking further time as his counsel was not present and in his absence he was not feeling comfortable to be cross examined. However, his application was rejected by the learned Tribunal vide order dt. 13.2.2006 and cross examination was closed and that was in his knowledge since the order was passed in his presence. However, application came to be filed on 16.4.2010 for recalling & setting aside the order and no reason was assigned for such inordinate delay caused in filing application and that application was rejected by the learned Tribunal after hearing the parties vide order dt. 21.11.2011 and thereafter the matter was heard on merits and reference was answered vide award dt. 7.2.2012 obviously it was in negative form holding that the workmen failed to prove/establish his claim in terms of reference made by the appropriate government and that was assailed by filing writ petition before this Court.

The learned single Judge after examining the records observed that there was no reason forthcoming of filing the affidavit in the form of cross examination almost after a year when the matter being fixed for cross

examination of witness on 26.9.2002 and even upto 13.2.2006 he didn't get himself cross examined for one reason or the other even on the said date when the employer's representative was present for his cross examination but he declined and moved application u/S. 36 of the Act and that was rejected by the learned Tribunal and even the application filed by him for recalling of the said order after inordinate delay on 16.4.2010, that was almost after 3½ years and taking note of conspicuous fact which came on record the learned single Judge was of the view that there was no error much less than the error on the face of the record committed by the learned Tribunal while passing the award which may require interference.

After hearing counsel for appellant at length & taking note of the material, we do not find any error being committed by the learned single Judge under order impugned which require interference.

Consequently, the appeal is wholly without substance and accordingly stands dismissed.

[Arun Bhansali], J.

[Ajay Rastogi], J.

"All corrections made in the judgment/order have been incorporated in the judgment/order being emailed"

Datar Singh
P.S.