IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Dinesh Kumar Sharma

CO 2187 of 2022
With
CAN 1 of 2024

M/s P.S. Digitech-HR (India) Private Limited
Vs.
Sri Partha Sarathi Rej

For the petitioner :	**Mr. Sandip Kumar Bhattacharya, Adv.,** **Mr. Dipta Dipak Banerjee, Adv.,** **Mr. Ishaan Aditya, Adv.**
For the opposite party:	**Mr. Rajib Ray, Adv.**
Heard on:	**21.08.2025**
Judgment on:	**25.09.2025**

DINESH KUMAR SHARMA, J.:

1. Present petitioner has been filed challenging the order dated May 28, 2022 passed by Learned Chief Judge, Presidency, Small Cause Court, Kolkata WBSC in Appeal 606 of 2018. Shorn of the details, opposite party was appointed as General Manager by the petitioner on a consolidated fee of Rs. 1,11,110/- per month vide an appointment letter dated September 1, 2011. The services of the opposite party was terminated by the petitioner as communicated vide an email dated November 26, 2012. The petitioner filed an application before the Deputy

Labour Commissioner, Government of West Bengal, Sixth Church Lane on June 19, 2015 challenging the termination letter. The petitioner alleged that he had served a legal notice through his advocate on March 19, 2011 followed by an another Communication dated May 11, 2013, but the petitioner did not respond to them. The petitioner claimed his consolidated salary along with payment for the notice period and prayed for his dues. The opposite party claimed a sum of Rs. 6,01,125/- . The Assistant Labour Commissioner, Kolkata after taking the evidence of both the parties vide order dated September 25, 2017 directed the petitioner to pay the applicant unpaid wages for the month of September, 2012, October, 2012 and November, 2012 amounting to Rs. 2,48,033/- and two months Rs. 2,22,220/- along with compensation of two times due wages as per the West Bengal Shops and Establishment (Amendment) Act, 2015 within 30 days of the receipt.

2. The order of the referee under the Shop and Establishment Act, 1963/Assistant Labour Commissioner, Kolkata was challenged by way of an appeal filed under Section 14(6) of the West Bengal Shops and Establishment Act, 1964. The said appeal was dismissed by the learned Chief Judge, Presidency, Small Cause Court vide detailed order dated May 28, 2022.

3. During the course of hearing learned counsel for the petitioner submitted that the application filed by the opposite party before the referee under Section 14(2) itself was not maintainable having been barred by limitation.

4. Learned counsel submitted that under Section 14 of the West Bengal Shops and Establishment Act, 1963 the application can be filed for unpaid wages

within a period of six months from the date on which the wages were to be paid in terms of Section 14 Sub-Section (1) of the West Bengal Shops and Establishment Act. Learned counsel submitted that such an application can be admitted even after period of six months, if the applicant satisfies the officer or authority that he had sufficient cause for not making the application within such period. Learned counsel for the petitioner admitted that the plea of limitation was not taken before the referee and the Appellate Court. However, learned counsel submits that the petitioner has taken this plea as one of the grounds in the petition filed before this Court.

5. Learned counsel for the petitioner submitted that it is a matter of record that the petitioner was terminated as communicated by the e-mail Dated November, 2012 and the application was moved before the Deputy Labour Commissioner on June 19, 2015 i.e. after lapse of more than two and a half years. Learned counsel submitted that there is nothing on the record to suggest that any application was moved for condonation of delay or the delay was condoned by the referee. Learned counsel submitted that Section 3 of the Limitation Act provides that even if the opposite party has not raised the issue of limitation, any proceedings instituted beyond the period of limitation is liable to be dismissed.

6. Learned counsel submitted that this Court in the supervisory jurisdiction is empowered to ensure that the illegality committed by the Courts below is not perpetuated. Learned counsel has placed reliance upon Chitturi Subbanna vs. Kudapa Subbanna, 1965 (2) SCR 661, Kamlesh Babu & Ors. vs. Lajpat Rai

Sharma & Ors., 2008 6 SCR 653 and State of Gujarat vs. M/s. Kothari & Associates, (2015) 10 SCC 133.

7. Learned counsel submitted that even if the point of limitation has not been taken before the referee or the learned Appellate Court this Court has exemplary power to quash the proceedings, if the cause is barred by limitation on the face of it.

8. Per contra, learned counsel for the opposite party submitted that, the plea of limitation is not available to the petitioner under the present proceedings as an award has already been passed by the competent authority, which has duly been upheld by the appellate authority. Learned counsel submitted that admittedly no point of limitation has ever raised in either forum. Learned counsel submitted that it is a settled proposition that plea of limitation must be raised at the earliest stage or it is deemed to have been waived. Learned counsel further placed that reliance upon Union of India vs. M.K. Sarkar, 2010 (2) SCC 59. Learned counsel submitted that statutory rights can be waived by conduct especially when a party participate without protest. Reliance has been placed upon Pannalal vs. State of Bombay, AIR 1963 SC 1516.

9. Learned counsel further submitted that Section 3 of the Limitation Act is concerned solely with the limitation at the time of the institution of the proceedings. Learned counsel submitted that once an order has been upheld by the Appellate Court, it cannot be set aside except on the merits. Reliance has been placed upon Baijnath Prasasd Sah vs. Ramphal Sahni, AIR 1962 Patna 1972. Learned counsel further submitted that this Court has a limited

jurisdiction under Article 227 of the Constitution. Reliance has been placed upon K. Valarmathi & Ors. vs. Kumaresan & Anr., SLP No. 21466 of 2024.

10. Leaned counsel further submitted that the West Bengal Shop & Establishment Act is a beneficial legislature and its interpretation has to be done in the manner, which is in accordance with the intention of the legislature. Learned counsel submitted that the petition is, therefore, liable to be dismissed.

11. Section 14 of the West Bengal Shops and Establishment Acts provides as under:

> *"**14. Payment and recovery of wages.**-(1) All wages payable to a person employed in a shop or an establishment shall be paid not later than the tenth day of the month immediately succeeding that in respect of which such wages are payable.*
>
> *(2) Where any deduction has been made from the wages of any person employed in a shop or an establishment or any payment of wages to such person has not been made within the date referred to 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):*
>
> > *Provided that an application under this section may be admitted after the said period of six months if the applicant satisfies the officer or authority that he had sufficient cause for not making the application within such period.*
>
> *(3) The officer or authority to whom or to which an application under sub-section (2) is made may, after giving the applicant and the shop-keeper or employer concerned an opportunity of being heard and after making such further inquiry, if any, as may be necessary, by order, direct, without prejudice to any other action which may, under this Act or any other law, lie against the shop-keeper or employer, the payment to the applicant of the amount deducted from the wages or of the wages due, together with such compensation, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter, as the officer or authority may think fit:*

> *Provided that no direction for the payment of compensation shall be made in the case of delay in the payment of wages if the officer or authority is satisfied that the delay was due to-*
>
> *(a) a bona fide error or bona fide dispute as to the amount payable to the applicant, or*
>
> *(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the shop-keeper or the employer, as the case data may be, was unable, though exercising reasonable diligence, to make prompt payment, or*
>
> *(c) the failure of the applicant to apply for or accept payment.*
>
> *(4) If on hearing any application made under sub-section (2), the officer or authority is satisfied that it was either malicious or vexatious, the officer or authority may, by order, direct that a penalty not exceeding fifty rupees be paid by the applicant to the shop-keeper or employer concerned.*
>
> *(5) Any amount directed to be paid by an order under sub-section (3) or sub-section (4) may be recovered by any Magistrate to whom the officer or authority making the order makes application in this behalf as if it were a fine imposed by such Magistrate.*
>
> *(6) An appeal shall lie from an order of the officer or authority dismissing any application made under sub-section (2) or giving any direction under sub-section (3) or sub-section (4), if made within thirty days of the date on which the order was made-*
>
> *(a) where the shop or establishment concerned is situated in any area within Calcutta as defined in the Calcutta Police Act, 1866, to the Court of Small Causes, Calcutta, and*
>
> *(b) where it is situated in any other area, to the Munsif having jurisdiction over such other area.*
>
> *(7) Nothing in this section shall apply to any person to whom the Payment of Wages Act, 1936, applies under section 1 of that Act".*

12. The combine reading of Section 14(1) and 14(2) makes it clear that in case of unpaid wages the employee is required an application within six months from the date of on which wages are payable. However, such application can be made beyond the six months also subject to the sufficient cause being shown

for not making the application within such period. Admittedly the present application was filed much beyond six months, it is also an admitted fact that no application was filed for the condonation of delay for showing the sufficient cause for not filling the application within the time.

13. Section 3, Sub-Section 1 of the Limitation Act provides as under:

> *"**3. Bar of limitation.—** (1)Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence".*

14. It is also necessary to refer to Section 29, Sub-Section 2 of the Limitation Act which provides as under:

> *"(2)Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law".*

15. Perusal of the Limitation Act indicates that no period had been prescribed in the schedule for filling such an application. It is also pertinent to mention that there is no provision in the West Bengal Shops and Establishment Act by which the provisions of Limitation Act had been expressly excluded. The question, therefore, is whether an award which has been passed on the basis of an application admittedly filed beyond the period of limitation, with no condonation of delay, and upheld in the appeal can now be questioned in the present proceedings.

16. It is a settled proposition that a question of law can be raised at any stage of the case and also in the final Court of Appeal, and such plea should be entertained in the interest of justice. Reliance can be placed upon Yeswant Deorao Deshmukh vs.Walchand Ramchand Kothari, 1950 SCR 852.

17. However, it is a settled proposition that the limitation is mixed question of law and fact. However, it is not a universal principle. This proposition would depend upon the facts and circumstances of each. If a cause is barred by limitation on the face of it, it cannot be deemed as a mixed question of fact and law. The limitation will be a mixed question of fact and law, if some facts are required to be placed on record, for establishing the issue of limitation.

18. In State of Gujrat vs. Ms. Kothari & Associates , (2015) 10 SCR 133 the Apex Court noted that in the peculiar facts and circumstances, it was not confronted with the situation where the plea of limitation is a mixed question of fact and law or where Additional evidence needs to be adduced. In Union of India vs. British India Corporation Ltd., (2003) 9 SCC 505 it was, inter alia, held that the question of limitation is a mandate to the forum and irrespective of the fact whether it was raised or not the forum must consider and apply if there is any dispute of facts. Similarly the privy counsel in Laxmi Sevak Sahoo vs. Ram Rup Sahoo, AIR 1994 privy counsel 24 , inter alia, held that the point of limitation is available even in the final Court.

19. In the present case also the point of limitation is not a mixed question of law as admittedly the petition was filed by the opposite party after the prescribed statutory period and it does not require any evidence or further collection of

material to determine the issue of limitation. There can be cases where the issue of limitation is a mixed question of fact and law it may require to place some facts on record for establishing the issue of limitation. It is pertinent to mention that there can be cases where the issue of limitation is a mixed question o facts and law as in the cases of acknowledgment, fraud, mistake or payment on account of death or interest on legacy as provided in Section 17, 18 and 19 of the Limitation Act.

20. It is pertinent to mention that Section 3 of the Limitation Act prescribes duty on the Court to ensure that proceedings have been instituted within the period of limitation as prescribed by the statute. If the First Court or the Appellate Court have failed to notice this lapse, the High Court cannot shut its eyes. If this Court refuses to permit raising such a plea, it would amount to perpetuating the illegality.

21. In the present case it is not the plea of the opposite party that there was sufficient reasons for filling of the application beyond the period of limitation. The plea as being raised is that this Court cannot go into the issue of limitation, for the reason it was not raised before the referee or the First Appellate Court. There cannot be any doubt to the fact that in the present case the application filed before referee was barred by limitation on the face of it.

22. The issue being raised by the opposite party regarding estoppel and doctrine of acquiescence or waiver and cannot be accepted in the peculiar facts and circumstances of the case. It is pertinent to mention that with the consent of the parties the limitation cannot be extended. The limitations have been

provided in the statute to bring a finality and to put a time frame within which the proceedings can be instituted so as to bring an order in the administration of justice.

23. In Indian Oil Corporation Ltd. vs. Sudera Realty Pvt. Ltd., 2022 SCC OnLine 117 it was, inter alia held that if limitation as raised is pure question of law, which does not involve any investigation of facts same can be entertained even by the Supreme Court. It is also pertinent to mention here that in Noharlal Verma vs. District Cooperative Central Bank Ltd., (2008) 14 SCC 445, it was, inter alia, held that question of limitation goes to the root of the matter. It was further, inter alia, held that if a suit appeal or application is beyond limitation, Court or adjudicating authority has no jurisdiction, power or authority to entertain the matter and decide it on merits. It was emphasized that the Court has an independent duty to look into aspect of limitation even though limitation has not been setup as a defense.

24. It is also pertinent to mention here that there cannot be estoppel against the Statute. It is also a settled proposition that parties cannot waive or contract themselves out of the law of limitation. It may be mentioned that by virtue of Section 3 of the Limitation Act, it is beyond the power of the parties to waive the plea of limitation, as the point of limitation is one which, whether is taken by the defendant or not, the Court to bound to examine.

25. In view of the discussions made hereinabove the application filed by the opposite party before the adjudicating authority was beyond the period of limitation. Hence the appeal is allowed and the impugned order passed by the

Learned Appellate Court and Learned Referee is set aside. Petition is allowed. No order as to costs.

(Dinesh Kumar Sharma, J.)