

S.N. Aggarwal, J.

1. All these three writ petitions are proposed to be decided by this common judgment because question of facts and law involved in all of them are identical. In fact they all arise out of three similar awards of the same date dated 31.03.2006 passed by the Commissioner under the Workmen's Compensation Act.

2. Briefly stated the facts of the case are that the petitioner is alleged to be the owner of Brick-Kiln described as Jowar Bhatta. On 09.06.1993, a water tank on his Bhatta got burst in which four ladies allegedly working on his Bhatta got injured out of whom three namely Smt. Munni Devi, Smt. Sushila and Ms. Poonam died on the spot whereas the fourth one namely Smt. Phuli Devi suffered fracture on her back bone. Sh. Bhaggo, the husband of deceased Smt. Munni Devi filed a claim under the Workmen's compensation Act being WCC/9/94 and his said claim was dismissed by Sh. S.K. Parashar, Commissioner under the Workmen's Compensation Act vide order dated 26.04.2002 holding that the deceased Smt. Munni Devi was not in the employment of the petitioner. The husband of deceased Smt. Sushila and the mother of Ms. Poonam filed two separate claim applications seeking compensation of Rs.2.5 lac each with interest @ 12% per annum and the injured Smt. Phuli Devi filed a claim of Rs.2,11,790/- with interest @ 12% per annum. These claims were filed by them before the Commissioner under the Workmen's Compensation Act in January, 2001 after about 8 years of the incident of 09.06.1993 that took place at the Bhatta.

3. Earlier the above cases of compensation were pending before the Commissioner under the Workmen's Compensation Act in Tis Hazari when the entire Delhi had only one Commissioner under the Workmen's Compensation Act. In the year 2004, the Delhi State was divided into 9 divisions on area-wise basis for the purpose of the Workmen's Compensation Act and 9 Commissioners were appointed under the Workmen's Compensation Act area-wise. The cases for compensation with regard to the incident that took place at the petitioner's alleged Bhatta on 09.06.1993 were assigned to the Court of Workmen's Compensation Commissioner, Hari Nagar Delhi. Mr. Rajender Dhar, Deputy Labour Commissioner was working as a Commissioner under the Workmen's Compensation Act at Hari Nagar area at that time. The proceedings in the compensation cases went on before him till May, 2005. In May, 2005, Mr. Rajender Dhar was transferred from Hari Nagar to Ashok Vihar. Mr. Rajender Dhar started having jurisdiction to work as Commissioner under the Workmen's Compensation Act for Ashok Vihar area since May, 2005. However, he brought all the three files in which impugned awards dated 31.03.2006 have been passed with him from Hari Nagar to Ashok Vihar and passed the impugned awards dated 31.03.2006 describing himself as Commissioner under the Workmen's Compensation Act for Hari Nagar area, though at that time, he was working as Commissioner for Ashok Vihar area.

4. Vide three separate impugned awards all dated 31.03.2006, Rs.1,05,895/- have been awarded in favour of injured Smt. Phuli Devi; Rs.90,088/- in favour of husband of deceased Smt. Sushila Devi and Rs.91,416/- in favour of mother of deceased Ms. Poonam. It is aggrieved by these three separate awards, the petitioner has filed these three separate writ petitions seeking to challenge the said awards inter-alia on the ground of jurisdiction and also on merits.

5. Mr. Pradeep Kumar Arya, learned counsel appearing on behalf of the petitioner in all these three petitions had argued that the impugned awards are liable to be set aside by this Court on the ground of limitation and also for want of jurisdiction of the Officer who has passed the said awards. Mr. Arya had contended that there was no relationship of employer and employee between the deceased/injured workmen and the petitioner. According to him, the petitioner is a retired employee of Delhi Development Authority and he never did any business of Bhatta. He has relied upon an earlier order of the Commissioner under the Workmen's Compensation Act in the case of Bhaggu Vs. Jawahar Singh (WCD No. 9/94) decided on 22.04.2002 to contend that the claim filed by a similarly situated person stood already rejected on the ground of failure to prove the relationship of employer and employee between the parties and therefore according to him, different view on this aspect could not have been taken by the Officer who had passed the impugned awards. Mr. Arya has referred and relied upon the provisions contained in Sections 10 and 21 of the Workmen's Compensation Act in support of his arguments on the point of limitation and jurisdiction of the Officer who has passed the impugned awards.

6. On the other hand, Ms. Pratima Chauhan, learned counsel appearing on behalf of the workmen/legal representatives had taken two fold objections to the maintainability of these writ petitions. Her first contention was that the petitioner cannot be allowed to raise the objection of limitation for the first time in these writ petitions because according to her, the objection of limitation was not taken by him while proceedings were pending before the Commissioner under the Workmen's Compensation Act. The second contention of learned counsel appearing on behalf of workmen/legal representatives was that these writ petitions under Article 226/227 of the Constitution are not maintainable because an equally efficacious alternative remedy of appeal is provided under Section 30 of the Workmen's Compensation Act and in support of her said contention, she has relied upon two judgments of the Hon'ble Supreme Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Ors. AIR 1985 Supreme Court 330 and in Sadhna Lodh Vs. National Insurance Company Ltd. and Anr I (2003) ACC 332 (Supreme Court). She has also relied upon one unreported judgment of Learned Single Judge of this Court in Bajaj Allianz General Insurance Company Ltd. Vs. Commissioner, Workmen's Compensation, Government of NCT of Delhi and Ors (CM Main No.844/2008 decided on 31.10.2008).

7. In view of the above rival arguments advanced by the counsel for the parties, the first and foremost question that arises for consideration is about the maintainability of these writ petitions in view of availability of an alternative remedy of appeal provided in

Section 30 of the Workmen's Compensation Act, 1923. This question can best be decided by analysing the judgments relied upon by the counsel for both the parties on this aspect.

8. In Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Ors. (Supra), it was held by the Hon'ble Supreme Court as under:- Art. 226 is not meant to short circuit or circumvent statutory proceedings. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Art. 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. The Supreme Court can take judicial notice of the fact that the vast majority of the petitions under Art 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice needs to be strongly discouraged.

9. In Sadhna Lodh Vs. National Insurance Company Ltd. and Anr (Supra), it was held by the Hon'ble Supreme Court as under:- The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as in Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior Court or Tribunal purports to have passed the order or to correct errors of law in the decision.

10. In Bajaj Allianz General Insurance Company Ltd. Vs. Commissioner, Workmen's Compensation, Government of NCT of Delhi and Ors' case, this Court relying upon a judgment of the Madras High Court in Management of Bhavanji Mills Vs. Deputy Commissioner of Labour 2002 (92) FLR 817 has held as under:- An order of Commissioner under Workmen's Compensation Act is an appealable order under Section 30 of the Act and an appeal lies to the High Court from the orders of the Commissioner awarding compensation whether lumpsum or by way of redemption or a half monthly payment or otherwise. When the Act provides remedy of appeal against the order of the Commissioner, I consider preferring of a Writ Petition under Article 226/227 was not open to the petitioner. The petitioner should have preferred an appeal. The Act provides for certain limitations and conditions for preferring an appeal and a party preferring appeal is supposed to comply with those conditions like deposit of the entire compensation amount. I therefore consider that in order to avoid the conditions as mentioned in the Section 30, if a party prefers Writ Petition either under Article 226 or Article 227, the Court should not entertain such a Writ Petition.

11. In State of Tripura Vs. Manoranjan Chakraborty and Ors (2001) 10 SCC 740 it was held by a three Judges Bench of Hon'ble Supreme Court that even where alternative

remedy of appeal is provided in Statute, still a writ court can in appropriate case exercise its jurisdiction to do substantive justice. It was further held that normally the provisions of the Act would have to be complied with but the availability of the writ jurisdiction should dispel any doubt which a citizen has against a high-handed or palpable illegal order which may be passed by the assessing authority. Similarly in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors AIR 1999 Supreme Court 22, it was held by the Supreme Court that the availability of alternative remedy does not affect the jurisdiction of the High Court, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

12. On giving my anxious consideration to the above mentioned judgments on the aspect of alternative remedy, I am of the view that normally when an alternative remedy of appeal is provided by the Statute, the writ petition under Articles 226 and 227 of the Constitution should not be entertained by the High court but there is no such bar in entertaining the such writ petition if it is shown that the order challenged in the writ petition is without jurisdiction and is likely to cause injustice to one or the other party on the facts of a given case. I am of the view that each case has to be examined by the Court on its own facts and no hard and fast straight jacket formula can be laid down on the maintainability of a writ petition when an alternative remedy of appeal is provided by the Statute.

13. The judgments on the point of alternative remedy relied upon by the counsel for the workmen/ legal representatives are not applicable to the facts of the present case because in my view, the impugned awards under the Workmen's Compensation Act, 1923 assailed in these petitions are vitiated for want of jurisdiction of the officer who had passed these awards.

14. Section 10 of the Workmen's Compensation Act, 1923 prescribes a limitation of two years for filing a claim to be reckoned from the date of the accident or the date of death. However, in terms of proviso to Section 10 (1), a discretion has been given to the Commissioner under the Workmen's Compensation Act to entertain and decide any claim for compensation even after expiry of two years limitation provided sufficient cause is shown for such delay.

15. On a plain reading of Section 10 (1) and last proviso thereto, it is clear that the claims could have been entertained by the Commissioner under the Workmen's Compensation Act only within two years of death and the delay could have been condoned only on showing sufficient cause for such delay. In the present case, the accident admittedly took place on 09.06.1993 and the claims in all these three cases which are under consideration were filed in January, 2001. The claims were filed after about 8 years of the accident. The claim applications have been annexed with the writ petitions and the same have been perused by me. There is not even a whisper in any of the three claim applications as to why the claim was filed after 8 years of the accident. Even the Commissioner under the Workmen's Compensation Act who has passed the impugned awards has not at all dealt with the question of limitation or the reason for

entertaining the claim after expiry of prescribed period of limitation of two years. I do not find any substance in the argument of the counsel for the respondents (workmen) that the petitioner cannot be allowed to take the objection of limitation for the first time in these writ petitions because the objection of limitation was not taken by him in reply to the claim applications. I am of the view that the objection of limitation is an objection which goes to the root of the matter as it relates to jurisdiction of the Commissioner to entertain the claim beyond the prescribed period of limitation in the Statute. In the opinion of this Court, the objection of limitation can be raised by a party at any stage of legal proceedings, in case such objection can be decided on the basis of material already available on record. Reliance in support of this view is placed on a three Judges Bench judgment of the Supreme Court in Management of State Bank of Hyderabad Vs. Vasudev Anant Bhide Etc. 1969 (2) SCC 491. Admittedly in the present case, the claims were filed before the Commissioner under the Workmen's Compensation Act after expiry of limitation of two years described in Section 10(1) of the Act and therefore the Commissioner could not have entertained the claim filed before him after expiry of limitation period.

16. Now coming to the jurisdiction or the authority of the Officer who has passed the impugned awards dated 31.03.2006, it may be noted that the said awards have been passed by Mr. Rejender Dhar describing himself as Commissioner under the Workmen's Compensation Act for Hari Nagar area whereas in fact he on the date of the impugned awards was working as Commissioner for Ashok Vihar area at that point of time. Whether Mr. Rajender Dhar who has passed the impugned awards acted within the parameters of his authority conferred on him under the provisions contained in the Workmen's Compensation Act, 1923 and Rules framed thereunder It shall be necessary to have a quick look to the statutory provisions on this aspect of the matter.

17. Section 21 deals with the venue of proceedings and transfer of claim from one Commissioner to another Commissioner. Section 21(1) of the Act which is relevant is extracted below:- (1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which- (a) the accident took place which resulted in the injury; or (b) the workman or in case of his death, the dependent claiming the compensation ordinarily resides; or (c) the employer has his registered office: Provided that no matter shall be processed or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned.

18. Rule 22 of the Workmen's Compensation Rules, 1924 is also relevant and the same is also extracted below:- 22. Application presented to wrong Commissioner:- (1) if it appears to the Commissioner on receiving application that it should be presented to another Commissioner he shall return it to the applicant after endorsing upon it the date of the presentation and return, the reason for returning it and designation of the Commissioner to whom it should be presented. (2) If it appears to the Commissioner at any subsequent stage that an application should have been presented to another

Commissioner, he shall send the application to the Commissioner empowered to deal with it and shall inform the applicant (and the opposite party, if he has received a copy of the application under rule (26), accordingly. (3) The Commissioner to whom an application is transferred under sub-rule (2) may continue the proceedings as if the previous proceedings or any part of them had been taken before him, if he is satisfied that the interests of the parties will not thereby be prejudiced.

19. Prior to 2004, the Delhi state was one composite unit and had only one Commissioner under the Workmen's Compensation Act, 1923. In 2004, Delhi was divided into 9 districts on area-wise basis. The accident on account of which the claims in the present cases were filed had taken place on 09.06.1993. The accident admittedly took place in the area of Hari Nagar. Up to May, 2005, the cases out of which the impugned awards have arisen were pending before the Commissioner under the Workmen's Compensation Act of Hari Nagar area and thereafter the Commissioner (Mr. Rajender Dhar) was transferred from Hari Nagar to Ashok Vihar area and this transfer took place in May, 2005. The impugned awards have been passed by Mr. Rajender Dhar after about 8-9 months of his transfer from Hari Nagar to Ashok Vihar area purporting to exercise the powers of Commissioner for Hari Nagar area. This was not permissible in view of statutory mandate contained in Section 21 (1) read with Rule 22 extracted above. It is quite evident that the Officer who has passed the impugned awards had no jurisdiction or authority to deal with the claim cases arising out of accident that took place in Hari Nagar area. For that reason, I have no hesitation in holding that the officer who has passed the impugned awards did not act within the parameters of authority conferred on him under the law.

20. Since the impugned awards are vitiated for want of jurisdiction and also on the ground of limitation, I need not go into the contentions advanced by the counsel for the parties on merit of the claims. In my opinion, the dismissal of these writ petitions on the ground of availability of alternative remedy of statutory appeal is likely to cause gross injustice to the petitioner. The impugned awards passed by the officer under the Workmen's Compensation Act by no means are maintainable in law and are, therefore, set aside.

21. In view of the above, all these three writ petitions are allowed. The impugned awards dated 31.03.2006 are hereby set aside. These writ petitions stand disposed of accordingly leaving the parties to bear their own costs.

22. The petitioner has deposited the amount as per impugned awards in the Registry of this Court pursuant to orders passed by this Court on 31.08.2007. The Registry is directed to return the said amount to the petitioner after 8 weeks from today.

Sd./-
S.N. AGGARWAL,J

DECEMBER 03, 2008