

**Vamadevan Vs. Authority Under the Payment of Wages Act and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/723049](http://sooperkanoon.com/723049)

**Court :** Kerala

**Decided On :** May-20-1965

**Reported in :** (1966)IILLJ87Ker

**Judge :** M. Madhavan Nair, J.

**Appellant :** Vamadevan

**Respondent :** Authority Under the Payment of Wages Act and anr.

**Judgement :**

**M. Madhavan, J.**

1. The petitioner had filed an application under the Payment of Wages Act, 1936 (P.W.A. No. 5 of 1962), before the labour court, Quilon. It was dismissed for default on 19 January 1963. On 30 January 1963 he moved an application to restore the original application. It was posted for hearing on 16 March 1963. The petitioner not having been present on that day, that petition was dismissed for default. He then moved another application on 4 April 1963, for restoring his application dated 30 January, averring that he had no information as to the posting of the matter on 16 March, and that a notice served on one Thankappan who was not authorized to receive it on his behalf was of no consequence as regards him. The authority has held that under the provisions of the Payment of Wages Act an application for restoration of a restoration application does not lie. It is against the last-mentioned order that this original petition is moved by the petitioner.

2. Though the authority has referred to the averment of the petitioner that he had no notice of the posting of his restoration application on 16 March 1963, nothing has been mentioned of its correctness or otherwise in the order. If the averment is correct, it follows that the restoration application dated 30 January 1963 was taken up for hearing and disposed of on a day of which the petitioner had no notice. Counsel for respondent 2, employer, contended that there is no provision, either in the Payment of Wages Act or the rules, requiring the authority to serve a notice on an applicant for restoration of a proceeding of the date fixed for its hearing. The procedure for hearing of an application under the Payment of Wages Act is laid in Rule 8 of the Kerala Payment of Wages (Procedure) Rules, 1958. It requires that notice of the date of hearing should be given to both parties, the mover as well as the opponent. No particular procedure is indicated for the hearing of a restoration application which is contemplated in Rule 8 (3). It must then follow that the procedure laid down for hearing an original application by the authority will apply to the hearing of the restoration application as well. If no notice was given of the date of hearing, the petitioner cannot be blamed for his non-appearance at the hearing. The disposal of the restoration application on 16 March 1963, was then in violation of the rules of procedure and has resulted in a miscarriage of justice. It has been pointed out by the Supreme Court in *S.M. Banerji v. Sri Krishna Agarwal* : [1960]2SCR289 :

Courts and tribunals are constituted to do justice between the parties within the confines of statutory limitations, and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted.

3. I am afraid that the view taken by the labour court in the impugned Order is hyper technical and in oversight of the substance thereof. The averment of the petitioner that no notice of hearing of his restoration application had been given to him stands unrebutted here. I would therefore direct the authority (the labour court, Quilon) to take the restoration application of 30 January 1963 to file and dispose of the same on its merits. Judgment accordingly. No order as to costs.