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**(2002) 04 AHC CK 0060**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 30838 of 1996**

Rakesh Kumar Jaiswal alias Guddu

APPELLANT

Vs

Prescribed Authority and Others

RESPONDENT

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**Date of Decision :** 10-04-2002

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 43 Rule 2  
Payment of Wages (Procedure) Rules, 1937 — Rule 8  
Payment of Wages Act, 1936 — Section 15(2), 16

**Citation :** (2002) 3 AWC 2047 : (2002) 94 FLR 201 : (2002) 3 LLJ 369 : (2002) 2 UPLBEC 1394

**Hon'ble Judges :** Anjani Kumar, J

**Bench :** Single Bench

**Advocate :** A.B. Singh, for the Appellant; N.K. Singh, S.C., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Anjani Kumar, J.—By means of the present writ petition under Article 226 of the Constitution of India, the petitioner-employer has challenged the orders dated 18.10.1995 and 31.7.1996, passed by the respondent No. 1, Annexures-3 and 5 to the writ petition, respectively.

2. The fact emerges in the present case is that the prescribed authority under the provisions of Payment of Wages Act have allowed the workman's application for payment of wages and compensation thereof under Sections 16 and 15(2) of the Payment of Wages Act. Aggrieved by the order passed by the prescribed authority, the employer preferred an application dated 21.12.1995 for recalling the ex parte order dated 18.10.1995. The respondent No. 1 vide its order dated 31.7.1996 rejected the said application of the employer on the ground of limitation. Thereafter employer preferred an appeal as contemplated under Order XLIII of the CPC before the respondent No. 2 praying therein that the order dated 18.10.1995 has been passed ex parte and that too restoration application has also been rejected by respondent No. 1. The respondent No. 1 while

rejecting the restoration application filed by the employer has observed that the order dated 18.10.1995 has been passed after hearing both the parties and the employer was directed to pay the wages and compensation thereto along with cost of Rs. 200 to the workman within one month from the date of order, but instead of paying the wages, etc. to the workman concerned, the employer has filed this restoration application after the expiry of limitation. The employer has stated before the respondent No. 2 that the application dated 21.12.1995 was filed under Order IX, Rule XIII of CPC for setting aside the ex parte order passed against the petitioner and, therefore, the employer is entitled to file an appeal under Order XLIII of CPC and that is why this appeal has not been filed u/s 17 of the Payment of Wages Act, 1936. The employer further submitted that Rule 8 of the Payment of Wages (Procedure) Rules, 1937, provides that if an ex parte order is passed, then the ex parte order may be set aside and the application may be re-heard on good cause being shown within one month of the date of said order. He further stated that the respondent No. 1 has rejected his restoration application illegally and without application of mind. The respondent No. 2 while dealing with the matter has observed that since restoration application filed under Rule 8 of the Payment of Wages (Procedure) Rules, 1937, has already been rejected by the prescribed authority on the ground of limitation, therefore, no appeal will lie against the Impugned order as the said rules do not say that an appeal will lie against the order of rejection of the application for setting aside an ex parte order and has dismissed the appeal filed by the employer.

3. For the reasons stated above, the orders passed by the respondents do not warrant interference by this Court under Article 226 of the Constitution of India.

4. In view of what has been stated above, the writ petition has no force and deserves to be dismissed and is hereby dismissed. The interim order, if any, stands vacated. However, the parties shall bear their own costs.