

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on May 12, 2014

+ **W.P.(C) 2117/2014**

UNIVERSITY OF DELHI Petitioner

Represented by: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. G.K.Pathak,
Advocate

versus

SURINDER KUMAR & ORS.

..... Respondents

Represented by: Mr.Amitesh Kumar with
Mr.Shashank Shekhar, Advocates
for UGC/R4
Mr.Vijay K., Advocate for
UOI/R5

+ **W.P.(C) 2118/2014**

UNIVERSITY OF DELHI Petitioner

Represented by: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. G.K.Pathak,
Advocate

versus

CHAMAL LAL WATAL & ORS.

..... Respondents

Represented by: Mr.Amitesh Kumar with
Mr.Shashank Shekhar, Advocates
for UGC/R4
Mr.Joginder Sukhija, Advocate
with Mr.M.P.Singh, Advocate for
R2, R3, R5 & R6

+ **W.P.(C) 2121/2014**

UNIVERSITY OF DELHI Petitioner

Represented by: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. G.K.Pathak,
Advocate

versus

KISHAN SINGH ANHAL & ORS.

..... Respondents

Represented by: Mr.Amitesh Kumar with

Mr.Shashank Shekhar, Advocates
for UGC/R4

Mr.Joginder Sukhija, Advocate
with Mr.M.P.Singh, Advocate for
R2, R3, R5 & R6

+

W.P.(C) 2123/2014

UNIVERSITY OF DELHI

..... Petitioner

Represented by: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. G.K.Pathak,
Advocate

versus

RAGHUBIR SINGH SAINI & ORS.

..... Respondents

Represented by: Mr.Amitesh Kumar with
Mr.Shashank Shekhar, Advocates
for UGC/R4
Mr.B.V.Niren, Advocate with
Mr.Prasouk Jain, Advocate for
R2, R3, R5 & R6

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. Since all these writ petitions involve one identical issue, they are being decided by this common order.
2. The Writ Petition (C) No. 2117/2014 is considered as a lead case, as such, the facts are noted from the said writ petition.
- 3 They are, the respondent No. 1 was the employee of the petitioner, who got retired on September 30, 2007 and was paid gratuity in a sum of Rs. 3,69,621/-. The respondent No. 1 filed a claim application before the Controlling Authority under the Payment of Gratuity Act, 1972 (Act in short) for grant of difference of gratuity amount. The Controlling Authority vide order dated October 09, 2012 allowed the application and directed the petitioner herein to pay a sum of Rs. 1,78,770/- towards the

balance gratuity with Simple Interest @ 10% p.a. within 30 days from the date of the receipt of the order.

4. The petitioner filed an appeal before the Appellate Authority under the Act on March 05, 2013. The Appellate Authority, vide the impugned order dated April 03, 2013 finding that it is beyond its powers to take cognizance of the appeal being time barred, dismissed the appeal.

5. It is the contention of the learned Senior Counsel appearing for the petitioner that the writ petition raises an important question regarding the applicability of the Act, as such, the jurisdiction of the Controlling Authority to entertain an application under the Act by an employee of the University of Delhi in view of Statute 28-A of the Statute under the Delhi University Act, 1922, which provides for payment of gratuity to its employees. In other words, he states that in view of Statute 28-A, no other provision/enactment would govern the payment of gratuity to the employees of the Delhi University. He states that such an objection was taken in the reply filed before the Controlling Authority.

6. It is a conceded position that the petitioner has filed the appeal against the order of the Controlling Authority dated October 09, 2012 on March 05, 2013. The very fact that the appeal has been filed under the provisions of the Act would show that the petitioner itself submitted to the jurisdiction of the Appellate Authority under the Act. Be that as it may, in the impugned order, the Appellate Authority has rejected the appeal on the ground that it did not have the powers to take cognizance of the appeal being time barred. Section 7(7) of the Act deals with the provision of appeal against an order passed by the Controlling Authority under Sub-Section 4 of Section 7 of the Act. The same is reproduced as under:

“7. Determination of the amount of gratuity.—

.....

.....

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.]”.

7. Suffice to state, recently, I have decided W.P.(C) 350/2014 on January 20, 2014, which writ petition was filed by the very same petitioner i.e. the University of Delhi, wherein I have dismissed the writ petition challenging identical order passed by the Appellate Authority in an appeal which was beyond limitation. I reproduce hereunder the relevant paragraphs of that order dated January 20, 2014:

“3. A perusal of the provision would reveal that an appeal would be required to be filed within a period of 60 days. If the same is not filed within the said period, if on a sufficient cause being shown by the appellant, it can still be filed within 60 days thereafter. There is no provision in the Section which entitles an Appellate Authority to

condone the delay if the appeal is filed beyond a period of 120 days.

4. It is the submission of the learned counsel for the petitioner that the delay that has occurred is because of administrative reasons and the Tribunal should have condoned the delay and heard the matter on merit. He would further submit that the petitioner has a good case on merit and important issue has been raised having larger repercussions.

5. I have considered the submissions of the learned counsel for the petitioner. The issue is no more res integra. A Single Judge of this court in the case Prudential Spinners Ltd. Vs. Employees P.F.Appellate Tribunal, 142 (2007) Delhi Law Times 361, while dealing with a similar provision under Employees Provident Fund and Miscellaneous Provisions Act, 1952 wherein an appeal is required to be filed in the similar manner as has been provided in Section 7(7) of the Act, has held as under:

“12. Having gone through the records and given my thoughtful consideration to the submissions made by the learned Counsel for the parties, this Court cannot but arrive at the conclusion that there is no error, infirmity or perversity in the impugned order dated 13th November, 2006 passed by the tribunal. The tribunal has rightly adopted and applied the law as laid down by a Division Bench of this Court in the case of Assistant Provident Fund Commissioner, Meerut (supra), which holds the field as on date. In view of a specific provision contained in Rule 7(2) of the Rules, the tribunal could not have condoned the delay beyond a maximum period of 120 days as sought to be contended by the petitioner. There is no force in the plea of the petitioner that the aforesaid judgment rendered by the Division Bench is in "jeopardy" and has lost its binding force as a precedent merely because leave to appeal has been granted by the Supreme Court in a Special Leave Petition pending before it, as admittedly, there is no stay operating against the order impugned in the

aforesaid Special Leave Petition. In this view of the matter, this Court is bound to follow the judgment rendered by a Division Bench of this Court referred to hereinabove, and also followed by two single Judges in the cases of Manu Tea Valley Company and Megacity Cement Pvt. Ltd, referred to hereinabove. Reliance placed by the learned Counsel for the petitioner on the judgments of the Supreme Court in the cases of N. Balakrishnan (supra) and Smt. Rani Kusum (supra) is also misconceived for the reason that the general observations with regard to extension/enlargement of time in condoning the delay, cannot be imported into statutes which not only prescribe a specific period of limitation but also further goes on to prescribe a period for condoning the delay, if any, in preferring the appeal. It may also be noted that in the case of N.Balakrishnan (supra), the observations of the court were in the context of condensation of delay under Section 5 of the Limitation Act which provision has been held by the Division Bench in the case of Assistant Provident Fund Commissioner, Meerut (supra) to be expressly excluded in considering an application made under the provisions of the Act and Rules, in view of existence of a specific provision of Rule 7(2) made in the Rules, for limitation.

13. In view of the fact that limitation is prescribed by a specific Rule, and condensation has also to be considered within the purview of that Rule alone and the provisions of the Limitation Act cannot be imported into Act and Rules, the inevitable conclusion is that the tribunal did not have the powers to condone the delay beyond a maximum period of 120 days as stipulated in Rule 7(2) of the Rules.

14.....

15. This Court shall, however, refrain from examining the relative merits/ demerits of the sufficiency of cause offered by the petitioner for

seeking condonation of delay, as discussed in the impugned order, and sought to be supported by the learned Counsel for the respondent, for the reason that once it has been held that the appeals were ex facie barred by limitation and could not have been entertained by the tribunal and were rightly rejected on the ground of limitation, there arises no occasion to delve further in the matter by examining the explanation furnished by the petitioner juxtaposed against the arguments offered by the RPFC to puncture holes in the said explanation. It is suffice to hold that no power vested with the tribunal to condone the delay in filing the appeals preferred by the petitioner, after expiry of a total of 120 days from the date of the order passed by the Assistant Provident Fund, Commissioner, Hyderabad, Andhra Pradesh”.

6. *It is noted that the same very provision i.e. Section 7(7) of the Act under similar circumstances came up for consideration before the Madras High Court in W.P. No. 14533 of 2001 decided on June 08, 2010 titled ‘The Commissioner, Udumalaipet Municipality Vs. Rajammal and Ors.’, wherein the Appellate Authority under the Act rejected the application for condonation of delay filed by the Municipality by holding that the appellate authority had no power to condone the delay of 60 days. I also note that a similar issue had come up for consideration before the High Court of Gujarat at Ahmedabad in the case of ‘Surendranagar Dudhrej Nagar Palika Vs. Motiben Danabhai’, Special Civil Application Nos. 9335, 9344, 8577, 8578 and 8579 of 2002 decided on May 01, 2003, wherein the Nagar Palika could not file the appeal before the Appellate Authority on the ground that period of limitation of 120 days had expired. The Nagar Palika invoked the jurisdiction of the High Court challenging the order of the Controlling Authority. The High Court in Para 13 considered the issue, whether an application under Section 5 of the Limitation Act, 1963 to condone the delay of more than 120 days in preferring the appeal, is*

applicable. The High Court was of the following view:

“13. As per Section 7 of the Gratuity Act, 1972 any person aggrieved by an order under Section 4 may within 60 days from the date of receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf. Provided that the appropriate Government or the appellate authority as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of 60 days, extend the said period of further period of 60 days. The further provision is that appeal is required to be filed after depositing the amount as determined by the Controlling Authority under Section 4(4) of the Gratuity Act, 1972. The law on this point is very clear to the effect that once the Limitation is prescribed under the statutory provision, then appellate authority is not entitled to invoke Section 5 of the Limitation Act, 1963 to condone the delay of more than 120 days in preferring the appeal that view has been taken by the Calcutta High Court Division Bench in case of City College, Calcutta V/s. State of West Bengal reported in 1987 (1) LLJ 41 and recently also, Bombay High Court has also taken the same view in case of Shri Gurudeo Ayurved Mahavidyalaya, Gurukunj Ashram and another V/s. Madhav and others reported in 1994 LAB. I.C. 1542 and it is decided that under Section 7(7), Proviso - Appeal - Limitation - Appeal filed beyond prescribed period of 120 days - Delay cannot be condoned - Section 5 of Limitation Act, not applicable. Therefore, once limitation is prescribed by the statutory provision and appeal is not filed within that time limit, then petitioner is not entitled to challenge the said order before this Court. When alternative effective statutory remedy of appeal is available and petitioner fails to avail the said remedy, then direct petition under Article 226/227 of the Constitution of India cannot be entertained and maintainable”.

7. In view of the aforesaid position, I do not see any infirmity in the order of the Appellate Authority in rejecting the appeal of the petitioner.

8. This Court however refrained from examining the merit of the case for the reason that the appeal was barred by time in terms of Section 7(7) of the Act”.

8. During the course of the submissions, the learned Senior Counsel for the petitioner has placed before me an order of the Division Bench of this Court in LPA No. 810/2013 wherein, the Division Bench, while issuing notice in the LPA had directed the appellant in that case i.e. University of Delhi (petitioner herein) to deposit the awarded amount in the Court and had also stayed the recovery of the same amount in another manner till the next date. He would contend that since identical issue arises in these writ petitions, this Court be pleased to entertain the same.

9. Having considered this submission of the learned Senior Counsel for the petitioner, I am of the view that since the Division Bench in LPA referred to above has only stayed the recovery subject to deposit of amount and since this Court has already taken a view in W.P.(C) 350/2014, for parity of reasons, I adopt the same view already taken in the said writ petition. Accordingly, I dismiss these writ petitions.

10. No order as to costs.

CM Nos. 4410, 4411, 4413/2014 & 4416 of 2014

In view of the order passed in the writ petition(s), these applications are disposed of as infructuous.

(V.KAMESWAR RAO)
JUDGE

MAY 12, 2014/akb