

Court No. - 19

Case :- WRIT - C No. - 3277 of 2024

Petitioner :- M/S Shrasty Computer Solutions And Technologies,
Lko. Thru. Proprietor Pravin Kumar

Respondent :- Employees Provident Organization Thru. Central
Provident Fund Commissioner, New Delhi And 4 Others

Counsel for Petitioner :- Jai Narayan Mishra

Counsel for Respondent :- Akhilesh Pratap Singh, C.S.C.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Jai Narayan Mishra, learned counsel for the petitioner, Sri S. K. Khare, learned Additional Chief Standing Counsel and Sri Akhilesh Pratap Singh, the learned counsel for the Respondents No. 1 to 4.
2. By means of the instant writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of an order dated 04.03.2024 passed by the Central Government Industrial Tribunal/EPFAT, Lucknow in Appeal No. 67 of 2023, whereby the appeal has been dismissed as being barred by the period of limitation as provided under Section 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997, which was filed by the petitioner against an order dated 31.03.2023 passed by the Assistant Provident Fund Commissioner, Regional Office, Lucknow, under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act.
3. The provisions of limitation for filing an Appeal under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act is provided in Rule 7(2) of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997, which reads as under:-

“7. Fee, time for filing appeal, deposit of amount due on filing appeal-

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the

date of issue of the notification/order, prefer an appeal to the Tribunal.

Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days:

Provided further that no appeal by the employer shall be entertained by a Tribunal unless he has deposited with the Tribunal (a Demand Draft payable in the Fund and bearing) 75 per cent of the amount due from him as determined under Section 7-A:

Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.”

4. The petitioner did not file the appeal within the time prescribed by the aforesaid Rule. He had filed Writ-C No. 8978 of 2023 challenging the aforesaid order dated 31.03.2023 and the writ petition was dismissed on the ground of availability of alternative remedy of filing the appeal and it was provided in the order that in case the petitioner files an appeal within a period of 15 days, the same shall be decided on its merits and shall not be rejected on the ground of delay.
5. The time of 15 days granted by this court expired on 31.10.2023. The petitioner did not file the appeal within the extended time granted by this Court and he filed the appeal on 07.11.2023.
6. The Central Government Industrial Tribunal dismissed the appeal holding that the appeal was not filed even within the extended time granted by this Court and it had been filed belatedly and the Tribunal has no power to condone any delay beyond 60 days.
7. The Tribunal has relied upon numerous judgments on the point.
8. In **Kushang Security and House Keeping Private Limited v. Central Government Industrial**, 2019 SCC OnLine All 3080, a coordinate Bench of this Court has dealt with this issue and after discussing numerous precedents on the issue, as held that: -

“32. In view of the foregoing discussion, the legal position which emerges that in terms of Section 7-I (2) every appeal is to be filed in such form and manner, within such time and be

accompanied by such fees, as may be prescribed. Rule 7 (2) of the Rules, 1997 provides for filing of the appeal within 60 days from the date of issuance of the order. The first proviso thereunder further stipulates that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.

33. It is thus seen that the EPF Act is a special law providing for institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments and in terms of the rules framed thereunder a certain period of limitation for filing an appeal having been provided for in clear terms and a further provision having been made for extension of such period only upto a specified time period and no further, the Appellate Tribunal would have no jurisdiction to treat within limitation, an appeal filed before it beyond such maximum time limit specified in terms of the statutory rules.

34. Moreover, in terms of the scheme and the intent of the provisions contained in the EPF Act it is seen that the legislature intended it to be a complete code by itself. As a consequence, even if the provisions of the Limitation Act may be held to have not been expressly excluded the principle of implied exclusion would apply in terms of the nature of the subject matter, the purpose and the scheme of the Act. The provisions contained under the Limitation Act, 1963 would therefore not be applicable for seeking extension of time beyond the statutory time period of 60 days from the date of issue of the notification/order, extendable by a further period of 60 days, upon the Tribunal being satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period. The maximum period for filing the appeal would be thus 120 (60+60) days from the date of the issuance of the notification/order which is sought to be challenged.

35. It is a well settled principle of statutory interpretation that where the statute confers power on the authority to condone the delay only to a limited extent the same cannot be stretched or extended beyond what has been provided under the statute.”

9. The decision in **Kushang Security and House Keeping Private Limited** (Supra) has been followed and reiterated in **Committee of Management, Angoori Devi Inter College and Others Versus State of U.P. and Others** 2019 (12) ADJ 62, wherein it was held that:

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“35. ...the EPF Act, 1952 being a special statute and having prescribed a certain period of limitation for filing a particular application thereunder and also having provided in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit, the Tribunal concerned would have no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Act, 1963.

36. It may be noticed that in the instant case against the order dated 28.12.2018 passed under Section 7-A of the EPF Act, 1952 a writ petition, Writ-C No. 5308 of 2019, was filed and the same was dismissed at the threshold vide order dated 18.2.2019 with liberty to the petitioners to avail the statutory remedy of appeal under Section 7-I of the EPF Act, 1952. A copy of the aforesaid order which has been filed as Annexure-9 to the writ petition indicates that a certified copy of the order dated 18.2.2019 was applied for on 10.6.2016 and the same was issued on 12.6.2019. It appears that only thereafter the appeal bearing Appeal A.T.A. No. 06 of 2019 was filed which came to be rejected as time barred vide order dated 15.7.2019 passed by the Appellate Authority/Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kanpur. These facts also go to show that the necessary requirement under Section 14 that the prior proceeding should have been prosecuted in good faith and with due diligence also does not stand fulfilled.

37. The time limit is prescribed by the rule making authority for filing an appeal and also the extended period having been provided, and no further extension thereof having been envisaged or contemplated, the Appellate Authority could not have granted any further extension. In view of the aforesaid, the order passed by the Appellate Authority recording its conclusion that the appeal was filed beyond the statutory period of limitation, cannot be faulted with.”

10. By means of its order dated 16.10.2023 passed in Writ-C No. 8978 of 2023 passed in exercise of its extraordinary Writ jurisdiction, this Court had extended the period of limitation prescribed by law and had granted 15 days' time to the petitioner to file the appeal, but the petitioner did not file the appeal within the aforesaid period. The Tribunal had no power to condone any delay for expiry of the extended period granted by this court. In these circumstances, the Central Government Industrial Tribunal/EPFAT, Lucknow has not

committed any illegality in passing of the impugned order dated 04.03.2024.

11. The learned Counsel for the petitioner has placed reliance upon the judgment in the case of **Collector (LA) v. Katiji**, (1987) 2 SCC 107 and **Sheo Raj Singh v. Union of India**, (2023) 10 SCC 531.
12. In **Collector (LA) v. Katiji**, (1987) 2 SCC 107 the Hon'ble Supreme Court had held that: -

“3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the “State” which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the “State” is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression “sufficient cause”. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.”

13. In **Sheo Raj Singh v. Union of India**, (2023) 10 SCC 531 also the Hon’ble Supreme Court explained the scope of Section 5 of the Limitation Act and held that: -

“31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an “explanation” and an “excuse”. An “explanation” is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must, however, be taken to distinguish an “explanation” from an “excuse”. Although people tend to see “explanation” and “excuse” as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An “excuse” is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an “excuse” would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and,

therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.”

14. Both the aforesaid cases explain the scope of Section 5 of the Limitation Act and the approach to be adopted by the Courts while deciding an application under Section 5. As Section 5 of the Limitation Act does not apply to the appeals filed under the Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, the law laid down in **Collector (LA) v. Katiji** and **Sheo Raj Singh v. Union of India** (Supra) would have no application to the present case.
15. So far as the question of this Court exercising its extraordinary powers under Article 226 of the Constitution of India for again extending the prescribed period of limitation is concerned, this Court has already exercised this power in favour of the petitioner while passing the order dated 31.03.2023 in Writ-C No. 8978 of 2023 filed by the petitioner by providing that in case the petitioner filed an appeal within a period of 15 days, the same should be decided on its merits and should not be rejected on the ground of delay.
16. Although, the petitioner claimed that he could not file the appeal within time granted by this Court as he had fallen ill, the medical certificate annexed with the writ petition mentions that he was under treatment of a doctor since 17.10.2023 to 31.10.2023 and he became medically fit on 31.10.2023. The appeal has been filed seven days after expiry of the time granted by this Court as well as after his regaining fitness.
17. It is also relevant to note that the Second Proviso appended to Rule 7(2) of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 provides that no appeal by the employer shall be entertained by a Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75 per cent of the

amount due from him as determined under Section 7-A. The learned Counsel for the Employees Provident Fund Organization has pointed out even while filing the time barred appeal, the petitioner did not comply with this provision.

18. In **Basawaraj v. Land Acquisition Officer**, (2013) 14 SCC 81, the Hon'ble Supreme Court held that: -

*“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute”*

19. Keeping in view the entire facts and circumstances of the case, it appears that the petitioner has not complied with the mandate of Rule 7 C of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 on two counts – (1) he did not file the appeal in the prescribed period of limitation or even in the extended period granted by this Court and (2) he did not deposit 75% of the amount due from him as determined under Section 7-A. Therefore, there appears to be no good ground for again extending the period of limitation for filing the appeal by the petitioner.
20. The writ petition lacks merit and the same is hereby ***dismissed***.

(Subhash Vidyarthi J.)

Order Date : 10.04.2024

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