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

Date of Decision: 22nd July, 2015

+W.P.(C) 1676/2008 & CM No.2218/2010

FOOD CORPORATION OF INDIA Appellant
Through: Mr.Karunesh Tandon , Advocate

versus

APPELLANT AUTHORITY (CENTRAL) Respondents
UNDER INDUSTRIAL EMPLOYMENT
(STANDING ORDERS) Act, 1946 & Ors.
Through: Mr.Inderjit Singh, Advocate for respondent
no.2.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The short question involved in the present petition is whether the appeal filed by the petitioner before the Appellate Tribunal under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as the 'Act') was within limitation and if not, whether the delay can be condoned or not.

2. The management of Food Corporation of India, New Delhi submitted an appeal under Section 6 of the Act challenging the order dated 05.01.2005 passed by the Certifying Officer and RIC(c), New Delhi issued in the

application of the FCI Management seeking amendment to existing clauses 1(3), 5, 1 & 2(A) and clause 16 of the Certified Standing Orders. The appeal was dismissed by the Appellate Authority on the ground of limitation by observing that the Certifying Officer passed the order of 05.01.2005. The order was issued/despached on 25.01.2005 as per the entry in the despatch register. The copy of the order was received by the Management on 28.01.2005. The appeal dated 28.02.2005 was received in the office of CLC(C) on 01.03.2005 as per the stamp of Central Registry of CLC(C) office on the original copy of the memorandum of appeal although the copy of the appeal available in the records of the management shows 28.02.2005 as the date of receipt as per the stamp of Central Registry. It was noted that some mischief had taken place in the Central Registry of CLC(C) office however without going into that aspect, it was observed that 30 days period from the date when the order was sent came to an end on 24.02.2005 as such, the appeal was barred by time. The contention of the appellant that the date on which the copy of the order is sent should be interpreted as the date on which the order came to the knowledge of the appellant did not find favour with the Appellate Authority by observing that there is no scope for such an interpretation in view of the clarity in the Section 6(1), as such, the appeal was rejected.

3. Challenging the impugned order, the present writ petition has been filed under Article 226/227 of the Constitution of India for setting aside the impugned order dated 08.10.2007 passed by the Deputy Chief Labour Commissioner. The validity of the impugned order has been assailed by learned counsel for the petitioner *inter alia* on the ground that the order has been passed on very hyper-technical view without appreciating the fact that the appeal was filed within 30 days from the date of receipt of impugned order dated 05.01.2005. The petitioner in fact had received the copy of the impugned order dated 05.01.2005 on 28.01.2005 and the appeal was filed on 28.02.2005. Hence, the appeal was preferred within the prescribed period from the date of knowledge of the order. Moreover, the provisions of limitation mentioned in Section 6 of the Act otherwise is not mandatory but directory in nature. Even if it is assumed that there is a delay of three days, that can be condoned as provisions of civil Acts are also applicable to the Industrial Disputes Act and no separate application was required. Reliance was placed on *Assistant Transport Commissioner (Administration), Uttar Pradesh vs. Sri Nand Singh* 1980 SCR(1) 131 and *Badarpur Power Engineers Association vs. Deputy Chief Labour Commissioner & Ors.* 1992(24) DRJ 275.

4. Rebutting the submissions of learned counsel for the petitioner,

learned counsel for the respondent submits that the limitation of 30 days for preferring an appeal against the order certifying the standing order is 30 days from the date on which copies are sent. The copies were sent on 25.01.2005, therefore, the filing of the appeal by the petitioner on 28.02.2005/01.03.2005 was beyond the stipulated period and, therefore, the Appellate Authority was justified in rejecting the appeal filed by the Management. The impugned order does not suffer from any infirmity which calls for interference as such, petition is liable to be dismissed. He also placed reliance on ***Badarpur Power Engineers*** (supra) on which reliance was placed by learned counsel for the petitioner.

5. In order to appreciate the rival submissions of learned counsels for the parties, it will be relevant to reproduce Section 6 of the Industrial Employment (Standing Orders) Act, 1946 which reads as under:-

"6. Appeals- (Any employer, workman, trade union or other prescribed representatives of the workman) aggrieved by the order of the Certifying Officer under sub-section(2) of section 5 may, within (thirty days) from the date on which copies are sent under sub-section(3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

(2) The appellate authority, shall, within seven days of its order under sub-section(1), send copies thereof of the Certifying Officer to the employer and to the trade union or other prescribed representatives of the workmen accompanied unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner."

6. A bare perusal of this section goes to show that any employer, workman, trade union or prescribed representatives of the workman aggrieved by the order of the Certifying Officer can prefer an appeal to the Appellate Authority within 30 days “from the date on which copies are sent”. The wordings of the section are quite clear that the period of 30 days is to be counted from the date on which copies are sent. Learned counsel for the petitioner has placed reliance on *Assistant Transport Commissioner* (supra) where the respondent’s application under Section 15 of U.P Motor Vehicles Taxation Act, 1997 for exemption of tax in respect of his motor vehicle was rejected by the taxation officer vide letter dated 20/24. 1964 and this was received by him on 29.10.1964. The limitation for filing the appeal was 30 days. On the question whether the period of limitation starts from the date of the order or the date of communication of the order, it was held that the order must be communicated directly or constructively so that the affected party must be deemed to have known the order. It was observed that the period of limitation was to be counted from the date when the order was received for the purpose of filing an appeal. However, the provisions of U.P. Motor Vehicles Taxation Act are not *pari materia* with the provisions of Section 6 of the Act. Section 18 of the U.P. Motor Vehicles Taxation Act,

1997 provides for appeal and so far is relevant for the present purpose reads as under:-

*“Section 18(1):-Any person aggrieved by an order of the Taxation Officer made under Section 12 may, within 30 days from the **date of receipt of such order**, prefer an appeal to the Appellate Authority.”*

7. The Section itself provides that period of 30 days is to be counted from the **date of receipt of such order** unlike Section 6 of the Act where 30 days are to be counted from the **date on which copies are sent**. That being so, the petitioner does not get any help from *Assistant Transport Commissioner* (supra).

8. In *Badarpur Power Engineers Association* (supra) on which reliance has been placed by both the counsels, the question for consideration was whether the appeal filed against the certified standing orders was within the period of limitation. The order certifying the standing order was passed on January 04, 1991 and the same was despatched on January 07, 1991. The petitioner received the said order on January 09, 1991 and an appeal was filed on February 06, 1991. The appeal was dismissed on the ground that it was barred by time by observing that the date on which the order was sent viz., January 07, 1991 was not to be excluded in computing the period of limitation of 30 days, as prescribed by Section 6 of the Act. It was observed that provisions of Indian Limitation Act were not applicable and the

appellate court did not have the power to grant extension of time. The Division Bench of this Court observed that the appellate court may be right in observing that the provisions of Limitation Act were not attracted, nevertheless, reference was made to Section 9 of the General Clauses Act for construing the word 'from' for observing that as per Section 9(1) of the General Clauses Act when in any Central Act or regulation the word used is 'from', then the first day in a series of days shall be excluded. That being so, January 07, 1991 had to be excluded while computing the period of limitation and with the exclusion of January 07, 1991 the limitation would have expired on February 06, 1991. The appeal having being filed on February 06, 1991 was within the period of limitation.

9. So far as the present case is concerned, the petitioner does not get any benefit from the interpretation of word 'from', as provided in Section 9 of the General Clauses Act because the order was issued/despached on 25.01.2005 and even if this date is excluded even then the appeal having being filed on 28.02.2005/01.03.2005, was barred by time. On the other hand, even the Division Bench observed that the provisions of Limitation Act were not attracted. Therefore, the Appellate Authority was not competent to condone the delay in filing the appeal.

10. Substantially, similar question arose before Punjab and Haryana High

Court in *The Haryana Leathers Chemicals Workers Union Jind vs. The Industrial Tribunal cum Labour Court and Ors.* 2015(1)SCT738(P&H) where the appeal preferred by the petitioner against the certification of the standing order was declined on the ground of limitation. The standing orders were certified on 01.04.1991. The petitioner preferred an appeal in October, 1991. The appeal was dismissed on the ground of limitation. The writ petition was filed by the petitioner and the same was dismissed by observing that there is no provision in the Act empowering the Appellate Authority to condone the delay and that being so, even the appeal which was preferred beyond limitation, was rightly rejected.

11. In the instant case also, the appeal having being preferred beyond the period of 30 days from the date when the “order was sent” was barred by time and was rightly rejected. Finding no infirmity in the impugned order, instant petition is dismissed.

Pending application, if any, also stands disposed of.

(SUNITA GUPTA)
JUDGE

JULY 22, 2015
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