

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12526 OF 2016

Nanded Zilla Dekhreh Sahakari
Sanstha Maryadit, Nanded, through
it's Chief Executive Officer, Office
situated behind Kabde Hospital,
Shivaji Nagar, Nanded.

..Petitioner

Versus

Narhar Pralhadrao Kulkarni,
Age 70 years, Occ. Retired Secretary,
R/o At Post Halda, Tq. Kandhar,
District Nanded.

..Respondent

AND

WRIT PETITION NO. 12545 OF 2016

Nanded Zilla Dekhreh Sahakari
Sanstha Maryadit, Nanded, through
it's Chief Executive Officer, Office
situated behind Kabde Hospital,
Shivaji Nagar, Nanded.

..Petitioner

Versus

Namdev Maneji Tidke
Age 70 years, Occ. Retired Secretary,
R/o Kamta (Kh.), Tq. Nanded,
District Nanded.

..Respondent

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Advocate for Petitioners : Shri G.D.Kale & Shri S.H.Panchal
Advocate for Respondents : Dr. C.S.Tembhurnikar

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CORAM : RAVINDRA V. GHUGE, J.

Dated: December 20, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The issue raised for the decision of this Court is as to whether the Appeal filed under Section 7(7) of the Payment of Gratuity Act, 1972 before the appellate authority, could be entertained beyond the limitation period.

5. The petitioner in both these matters is aggrieved by the order dated 28.11.2016, by which, it has concluded that the Appeal filed by the petitioner for challenging the judgment of the Controlling Authority beyond the limitation period cannot be entertained as the Appellate Authority does not have the jurisdiction to condone delay beyond 60 days.

6. The learned counsel for the petitioner has strenuously criticized the impugned order and has narrated in details the circumstances which precluded the petitioner from approaching the Appellate Authority within limitation. The judgment of the Controlling Authority dated 14.3.2016 was challenged on 18.11.2016. I am not required to consider the reasons and circumstances for the

delay since the Industrial Court, which is the appellate authority, has held that the appeal is not maintainable purely on the ground of delay.

7. Learned Advocates for the petitioners have strenuously submitted that what could not have been done by the appellate authority, can be done by this Court as it has unlimited jurisdiction under Article 226 of the Constitution of India. He submits that the limitation period can be enlarged by exercising extra-ordinary jurisdiction of this Court.

8. He has placed reliance upon the judgment of the Honourable Gujarat High Court in the matter of GSRTC, through Divisional Controller Vs. Anwarhussain Mamhadbhai Kadri [2009-III-LLJ-442]. He has also relied upon the judgment of the same Court in the matter of Backbone Project limited Vs. Yogesh Bhavchandbhai Gadhiya and others [2009-IV-LLJ- 782].

9. The judgment in the matter of Backbone Project is delivered by the same Court (Coram : K.M. Thakar,J.), which delivered the earlier judgment in the matter of GSRTC (supra).

10. Section 7(7) and the proviso thereunder reads as below:-

“Section 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.”

11. It was concluded in GSRTC case (supra) that Section 5 of the Limitation Act, enacted by the Parliament would be applicable and the delay caused beyond 60 days can be condoned.

12. A similar provision is found in Section 34 of the Arbitration and Conciliation Act, 1996 reads as under:-

“Section 34 - Application for setting aside arbitral award.

(1) *Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*

(2) *An arbitral award may be set aside by the Court only if-*

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matter beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of

this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*
- (ii) the arbitral award is in conflict with the public policy of India.*

Explanation 1.-- For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or*
- (ii) it is in contravention with the fundamental policy of Indian law; or*
- (iii) it is in conflict with the most basic notions of morality or justice.*

Explanation 2.-- For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-

appreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award, or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section

(5) is served upon the other party.”

13. Sub-section (3) below Section 34 provides for setting aside of an order on an application which is to be made within three months from the date on which the party making that application had received the arbitral award. The proviso thereunder permits entertaining of the application beyond three months provided the said application is filed within 30 days, but not thereafter.

14. The Honourable Apex Court in the matter of Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Ors. [(2008) 7 SCC 169], has concluded that the words “but not thereafter” would lead to a meaning that any application seeking condonation of delay beyond 30 days cannot be entertained.

15. In order to scrutinize as to whether the Legislature intended the entertaining of an appeal u/s 7(7) beyond the 120 days prescribed, the scheme under the Payment of Gratuity Act needs to be gone into. Rule 7(5) of the Payment of Gratuity (Central) Rules, 1972 reads as under :-

"7. Application for gratuity -

(5) An application for payment of gratuity filed after the expiry of the periods specified in this Rule shall also be entertained by the employer, if the

applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the Controlling Authority for his decision."

16. The above reproduced rule would indicate that the Legislature indicated that an application for payment of gratuity could be entertained beyond 30 days as prescribed in Rule 7(1). The phraseology in Rule 7(5) leads to a meaning that if sufficient cause for delay is adduced, no claim for gratuity would be invalid merely because it is filed beyond the specified period. Rule 18 under the Central Rules with regard to entertaining of an appeal however does not enlarge the limitation period of 60 days and the additional 60 days provided under the proviso to Section 7(7).

17. Form 'U' containing an abstract of the Act and the Rules under the Central Rules indicates from clause (10) that beyond 60 days as is prescribed for preferring an appeal, an appeal filed delayedly could be entertained within the further 60 days as prescribed u/s 7(7). The Payment of Gratuity Maharashtra Rules, 1972 does not prescribe the enlargement of the limitation period of 120 days as is provided u/s 7(7) of the Act.

18. In the matter of Commanding Officer, Naval Base V. Appellate Authority under the Payment of Gratuity Act, [(2004) 103 FLR 398], it was held that the maximum period allowed for filing an appeal u/s 7(7) of the Act was 120 days and Section 5 of the Limitation Act would not have any application in enlarging the said period. The rejection of the appeal owing to it being filed beyond 120 days was sustained.

19. The Kerala High Court therefore, in the Commanding Officer, Naval Base judgment (supra), while interpreting Section 7(7) has observed as under :-

" A reading of the above provision would reveal that an appeal has to be filed within 60 days and if it is not filed within 60 days, the Appellate Authority has jurisdiction to condone the delay of 60 days when sufficient cause is shown. The learned counsel for the 3rd respondent submitted that when a period has been prescribed in a special statute for filing an appeal, the same will have to be filed within that time and the provisions of the Limitation Act cannot have any application in condoning the delay in filing the appeal. Reliance was placed on the decision of the Supreme Court in Commissioner of Sales Tax v. Parson Tools and Plants, Kanpur AIR 1975 SC 1039 : 1975 (4) SCC 22. In the judgment it was held:

"17. Thus the principle that emerges is that if the legislature in a special statute prescribes a certain

period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, than the tribunal concerned has 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 Limitation Act.

18. *We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the court to give full effect to the same without scanning its wisdom or policy, and without en-grafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; more so if the statute is a taxing statute....."*

20. The Andhra Pradesh High Court, in the matter of Warangal District Co-operative Society Ltd., Vs. Appellate Authority under Payment of Gratuity Act, 1972 and others, [2002-III-LLJ 616] has observed in paragraph Nos. 8 to 12 as under :-

"8. *The question would be whether the special period of limitation is prescribed under any particular enactment for regulating the proceedings under the said enactment?*

Whether the provisions of the [Limitation Act](#), 1963, could still be invoked while dealing with the proceedings under the said special enactment?

9. Looking at the scheme of the [Limitation Act](#), [Section 3](#) of the Act declares that every suit instituted, appeal preferred and application made after the period prescribed for such institution, preference, etc., shall be dismissed. However, [Section 5](#) stipulates that any appeal" or application, except the application under Order 21 of the Code of Civil Procedure, if filed beyond the period of limitation prescribed under the [Limitation Act](#) could still be admitted by the Court, if the Court is satisfied that such an appellant or applicant had sufficient cause for not preferring the appeal or not making the application within the prescribed period of limitation. From the above two Sections, it appears that a suit filed beyond the prescribed period of limitation is absolutely barred, but an appeal preferred beyond the period of limitation prescribed could still be considered if the appellate Court is satisfied that such delay is by virtue of a cause which was not within the control of the appellant. [Section 29\(2\)](#) of the Limitation Act reads as follows:

Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of [Section 3](#) shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in [Sections 4 to 24](#) (inclusive) shall apply only in so far as,

and to the extent to which, they are not expressly excluded by such special or local law."

An analysis of the above sub-section shows that where a special period of limitation different from the one prescribed in the Schedule to the [Limitation Act](#), 1963, is prescribed by any special or local law for the purpose of filing the suit, appeal, or application, the bar contained under [Section 3](#) shall apply and such a suit or application is required to be dismissed as if that such a special limitation is prescribed under the Schedule to the [Limitation Act](#). It is further provided in the sub-section that provisions contained in [Sections 4](#) to [24](#) of the Limitation Act shall apply to the cases where a special limitation is prescribed as mentioned above, to the extent to which they have not expressly excluded by such special local law. Interpreting the scope of [Section 29\(2\)](#), the Supreme Court in [Shantilal M. Bhayani v. Shanti Bai](#), (supra), held that as there was no specific exclusion of application of the [Limitation Act](#) in the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the appellate authority under the Act was entitled to invoke the powers under [Section 5](#) of the Limitation Act and condone the delay in preferring the appeal under the said Act, though the said appeal was preferred beyond the period of special limitation prescribed under the Tamil Nadu Buildings (Lease and Rent Control) Act. Obviously, their Lordships while deciding the case had in mind the last clause of Section 29 of Sub-section (2) ... "they are not expressly excluded..."

10. Sovereign Legislature (Parliament) is competent to create such legal fictitious as the one created under [Section 29\(2\)](#) of the Limitation Act and also competent to prescribe

the limitation of such fictions.

11. However, the difficulty in this case is that the limitation prescribed under the [Payment of Gratuity Act](#), once again an enactment made by Parliament is only 60 days for the purpose of preferring an appeal. Under the proviso to [Section 7](#), Sub-section (7), the appellate authority is empowered to "extend the period" of limitation by another sixty days. In other words, the appellate authority is empowered to condone the delay to upper limit of another sixty days beyond the prescribed period of limitation. No doubt, the [Payment of Gratuity Act](#) does not expressly exclude the operation of the [Limitation Act](#), but the fact remains that the [Payment of Gratuity Act](#) is of the year 1972 where the [Limitation Act](#) is of the year 1963. The settled principle of interpretation of statutes is that if there are two mandates by the Sovereign Legislature, the later of the two shall prevail. Therefore, the fact that there was no express exclusion of [Section 5](#) of the limitation under the [Payment of Gratuity Act](#) makes no difference while construing the scope of the power of the appellate authority constituted under the [Payment of Gratuity Act](#), to condone the delay in preferring the appeals. The legal position enunciated by the Supreme Court in [Shantilal M. Bhayani v. Shanti Bai](#) (supra), in my view, must be understood in the context of the [Limitation Act](#), 1963, and the special period of limitation, prescribed in any other special or local law prior to the date of the enactment of the [Limitation Act](#). It is worthwhile mentioning that that the Tamil Nadu Buildings (Lease and Rent Control) Act, which is the subject matter of the issue before the Supreme Court in the above case was of the year 1960.

12. In view of my conclusion on this, I do not wish to examine the question whether the appellate authority under the Payment of Gratuity Act is a Court or not though a Division Bench of the Calcutta High Court in a decision in City College. Calcutta v. State of West Bengal 1987-I-LLJ-41, dealing with the identical situation held that the appellate authority under the Payment of Gratuity Act could not condone the delay beyond 120 days on the ground it is not a Court. "

21. The Madras High Court, in the matter of Special Officer, Salem Co-operative Primary Land Development Bank, Salem Vs. Deputy Commissioner of Labour and another [1998(3) LLJ 1168] has concluded in paragraph No.9 as under :-

"9. In AIR 1975 SC 1039 corresponding to Commissioner of Sales Tax v. Parson Tools & Plants it has been held as follows :

Thus the principle that emerges is that if the Legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time limit and no further then the Tribunal concerned has 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 Limitation Act."

Finally, the Supreme Court has opined that the object, the scheme and language of Section [10](#) of the Sales Tax Act do not permit the invocation of Section [14\(2\)](#) of the Limitation Act either in terms or in principle. In the light of the above decision of the Supreme Court, if we consider the provisions of the Payment of Gratuity Act, I feel that there is no justification for applying Section [5](#) of the Limitation Act for a belated petition before the appellate authority. "

22. The intent of the legislature in not permitting the filing of an appeal u/s 7(7) beyond 120 days is apparent and is more conspicuous when certain provisions for condonation of delay are provided in other Labour Laws. The Labour Courts (Practice and Procedure) Rules, 1975 framed under the MRTU and PULP, 1971 prescribe limitation under Rule 61 which is 90 days. Said Rule 61 reads as under :-

"61. If a complaint under Section 28 covers any unfair labour practice which occurred more than 90 days before the date the complaint was filed, the complainant shall file along with the complaint a separate application, for condonation of delay. That application shall disclose separately and specifically each unfair labour practice which occurred more than 90 days after the complaint was filed and in respect of

which condonation of delay is sought, the date of the occurrence thereof and the reasons for condonation of delay in respect thereof. Such an application shall be supported by an affidavit. "

23. It is, therefore, clear that the legislature intended entertaining a complaint beyond 90 days subject to condoning the delay for reasons which may be acceptable.

24. A similar provision is found in Regulation 101 of the Industrial Court Regulations, 1975. However, in so far as the revision petition u/s 44 of The 1971 Act is concerned, neither the Act nor the Rules prescribed any limitation.

25. Under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Section 7(I) permits filing of an appeal before the Appellate Provident Fund Tribunal. Rule 7(2) and the proviso thereunder, under the E.P.F.Appellate Tribunal (Procedure) Rules, 1997 mandates the filing of an appeal within 60 days from the date of the order. The proviso thereunder permits filing of an appeal beyond the limitation period of 60 days, but only within a further period of 60 days if the Tribunal is satisfied that the appellant was prevented by sufficient cause in preferring the appeal. As such, under the Rules framed under the 1952 Act, the limitation period of 60 days in preferring an appeal can be enlarged only by 60 days and not there

beyond.

26. Under Section 77 of The Employees' State Insurance Act, 1948, a proceeding before the Employees' Insurance Court can be commenced on an application which shall have to be filed within a period 3 years from the date on which the cause of action arose. Proviso to Section 77(1-A)(b) mandates that any claim shall not be made after 5 years of the period to which the claim relates. What is interesting is that u/s 82, an appeal shall lie to the High Court from an order of the Employees' Insurance Court if it involves a substantial question of law and the period of limitation is 60 days. However, u/s 82(4), it is specifically provided that Sections 5 and 12 of the Limitation Act, 1963 shall apply to appeals under this section. Section 82 reads as under :-

" 82. Appeal. - (1) Save as expressly provided in this Section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court, if it involves a substantial question of law.

(3) The period of limitation for an appeal under this Section shall be sixty days.

(4) The provisions of Sections 5 and 12 of the Limitation Act, 1963 shall apply to appeals under this section."

27. From the above, it is quite evident that wherever the legislature intended condonation of delay beyond the limitation period, language of the provision did indicate the intention. Where the provisions of the Limitation Act are made applicable, it is so provided specifically. Therefore, where the legislature did not prescribe entertaining of an appeal or a proceeding beyond particular number of days, the said period cannot be enlarged even by the Court. So also, the legislature did not apply S.5 and 12 of the Limitation Act, 1963 to the Payment of Gratuity Act, 1972.

28. Though the proviso below Section 7(7) does not use the said words “but not thereafter”, it permits extending of the period of limitation by a further period of 60 days. In my view, if the legislature did not intend to permit filing of an appeal under Section 7(7) beyond 60 days after the limitation period of 60 days is over, it cannot be interpreted to conclude that the proviso setting forth the limitation of 60 days would have no sanctity. Had the legislature intended to permit a litigating party to file an application beyond the said 60 days, in all beyond 120 days and if the said delay was to be condoned by enlarging the limitation period, the legislature would not have prescribed 60 days by the proviso to Section 7(7).

29. In the matter of Western Coalfields Vs. Presiding Officer.

Central Government [2000 III CLR 399], it was concluded that when the law does not provide for enlargement of the limitation period beyond what has been prescribed, the Court would not have the jurisdiction to condone the said delay. I am, therefore, of the view that the decision of the Gujrat High Court in the GSRTC case (supra) and Backbone Projects case (supra) would not be of assistance to the petitioner.

30. In the light of the above, I do not find that the appellate authority / Industrial Court has committed any error in concluding that the appeals filed by the petitioner beyond 120 days under Section 7(7) cannot be entertained.

31. These petitions being devoid of merits are, therefore, dismissed. Rule in both these petitions stand discharged.

(RAVINDRA V. GHUGE, J.)

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