

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No. 6111 of 2016
(The Chief Executive Officer, Zilla Parishad, Yavatmal .vs. Shriram
Hanumant Meshram)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders.
and Registrar's orders

Mr. D.M. Kale, Advocate for Petitioner.
Mr. D.C.R. Mishra, Advocate for Respondent No.1.
Mr. A.R. Chutke, AGP for Respondent No.2.

CORAM : Manish Pitale, J.
DATED : January 14, 2019.

The present writ petition challenges judgment and order dated 30.08.2016 passed by the Industrial Court at Yavatmal, in Misc. Application (PGA) No.1 of 2015. By the said judgment and order, the Industrial Court has rejected the application for condonation of delay in filing appeal by the petitioner herein.

2. The respondent no.1 had invoked the provisions of the Payment of Gratuity Act, 1972, praying for a direction to the petitioner to pay amount of gratuity due to him for the services rendered by respondent no.1. The said application was decided in favour of respondent no.1 by order dated 02.05.2015 passed by the Labour Court, Yavatmal. Aggrieved by the said order, the petitioner filed an appeal under Section 7(7) of the said Act on 13.10.2015 along with an application for condonation of delay in filing the said appeal.

3. According to the petitioner, it became aware of the passing of the order dated 02.05.2015 by the Labour Court on 10.08.2015 when an application was filed by the respondent no.1. Thereafter, certain steps were taken by the petitioner, which eventually resulted in filing of the appeal and an application for condonation of delay on 13.10.2015.

4. This application was opposed by respondent no.1 pointing out that he had submitted an application on 28.05.2015 along with a copy of the order dated 02.05.2015 passed by the Labour Court in his favour, in the office of the petitioner and that acknowledgments were also issued by the concerned department of the petitioner. On this basis, it was contended that the period of limitation commenced from 28.05.2015 and the appeal filed by the petitioner on 13.10.2015 before the Industrial Court was beyond the extended period of limitation of 120 days provided under the proviso to Section 7(7) of the said Act.

5. By the impugned judgment and order dated 30.08.2016, the Industrial Court accepted the contentions raised by respondent no.1 and dismissed the application for condonation of delay filed by the petitioner. The said order is challenged in the present writ petition.

6. While issuing notice for final disposal, this Court had granted stay of the disbursement of the entire amount of gratuity to the respondent no.1 since the

amount was deposited by the petitioner before the Industrial Court in terms of the requirement of Section 7(7) of the said Act.

7. Heard counsel for the parties.

8. The learned counsel appearing for the petitioner emphasised that in the application for condonation of delay filed on behalf of the petitioner before the Industrial Court, it was specifically pleaded that when the respondent no.1 filed an application dated 10.08.2015 with the petitioner, it became aware for the first time about the order dated 02.05.2015 passed by the Labour Court in favour of respondent no.1. Thereafter it was stated that the post of the Chief Executive Officer of the petitioner was manned by Officers who were frequently transferred, leading to the filing of the appeal on 13.10.2015 and that there was sufficient cause demonstrated by the petitioner for condonation of delay in filing the appeal.

9. The stand taken by the respondent no.1 before the Industrial Court is already recorded above. A perusal of the impugned judgment and order shows that in paragraph 6 thereof, the Industrial Court has recorded the fact that the respondent no.1 had placed on record original acknowledgments issued by the concerned department of the petitioner regarding application dated 28.05.2015 submitted by the respondent no.1 along with a copy of the order dated 02.05.2015 passed by the Labour Court. Thus, the original

acknowledgments issued by the concerned department of the petitioner were taken into consideration and the extended period of limitation of 120 days as specified in proviso to Section 7(7) of the said Act was applied by the Industrial Court. On that basis, the finding was rendered that when the period of limitation commenced from 28.05.2015, which in the facts of the present case was the first date when the petitioner acquired knowledge of passing of the order dated 02.05.2015 by the Labour Court, the appeal filed on 13.10.2015 was obviously well beyond the extended period of limitation of 120 days. This finding of fact, could not be shown to be erroneous in any manner by the learned counsel appearing for the petitioner. Much emphasis was placed on the contents of the application for condonation of delay, which sought to explain the delay after 10.08.2015, when the petitioner allegedly first became aware of the order dated 02.05.2015 passed by the Labour Court. The said claim of the petitioner has been found to be incorrect by the Industrial Court on the basis of original acknowledgments dated 28.05.2015 placed on record on behalf of the respondent no.1. This Court in writ jurisdiction does not find any ground for interfering with the said finding of fact rendered by the Industrial Court in the impugned judgment and order.

10. Apart from this, the Industrial Court has correctly relied upon judgments of the Division Bench of this Court in the cases of **Pharma Base India Private Limited .vs. State of Maharashtra and another (2009 (120) FLR 634)** and **J.L. Morrison India**

Limited .vs. Deputy Commissioner of Labour and others (2008 I LLJ 775) and judgment of learned Single Judge of this Court in **Writ Petition No. 1237 of 2015 dated 29.09.2015 and 05.10.2015 (Changunabai Sambhaji Gaware .vs. Kapus Visheshadnya)** wherein it has been categorically laid down that Section 5 of the Limitation Act, is not applicable to appeals filed under Section 7(7) of the aforesaid Act. Applying the said position of law to the facts of the present case, it becomes clear that the Industrial court had no power to condone delay beyond the specific extended period of limitation of 120 days provided under proviso to Section 7(7) of the said Act. In the present case, since on facts the Industrial Court has found that the period of limitation for filing the appeal by the petitioner commenced on 28.05.2015, the appeal filed on 13.10.2015 by the petitioner was well beyond the said period of limitation of 120 days, as a consequence there was no power to condone the delay in filing the said appeal. As a result, it is found that the impugned order passed by the Industrial Court deserves to be confirmed and that there is no merit in the present writ petition.

11. Accordingly, the present writ petition is dismissed. The impugned order passed by the Industrial Court is confirmed. Needless to say that the interim order granted by this Court on 24.10.2016 stands vacated.

JUDGE