

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.20557 of 2019

ORDER:

This writ petition is being disposed of at the stage of admission with the consent of both the parties.

2. The writ petition is filed seeking a Writ of Mandamus, declaring the impugned letter of the 3rd respondent, dated 23.07.2019, as arbitrary, illegal and against the order in W.A.No.21 of 2019, dated 25.03.2019 and sought a consequential direction directing the respondents to consider the appeal against the orders passed under Section 45-A, dated 16.07.2018 and decide the same as per law in the interest of justice.

3. Heard Sri P.Rama Sharana Sharma, counsel for petitioner and Sri B.G.Ravinder Reddy, Standing Counsel appearing for respondents.

4. It has been contended by the petitioner that it is a proprietary concern and is into the business of healthcare diagnostics and it had employed certain employees in order to carry on the business. The respondents have inspected the premises of the petitioner and passed orders under Section 45-A of Employees State Insurance Act on 16.07.2018, directing the petitioner to deposit ESI contributions amount. Challenging the same, the petitioner had filed W.P.No.44733 of 2018 before this Court and this Court dismissed the said writ petition vide orders dated 11.12.2018. Aggrieved by the dismissal of the writ petition, petitioner has carried the matter in appeal by filing W.A.No.21 of 2019

and the Hon'ble Division Bench disposed of the said writ appeal with the following observations :

- “3. Now, the learned Standing Counsel for the ESI Corporation has made available to the appellant-writ petitioner the copy of the order issued under Section 45-A of the Act on 16.07.2018. That being so, the appellant has adequate remedy by way of a statutory appeal against that order.
4. For the aforesaid reasons, this Writ Appeal is ordered clarifying that the impugned order of the learned Single Judge would not stand in the way of the appellant pursuing appellate remedies under the relevant statutory provisions and the consideration and disposal of that appeal by the competent authority would be untrammelled by anything stated in the impugned order of the learned Single Judge.
5. The Writ Appeal is ordered accordingly.”

5. Pursuant to the aforesaid orders of Division Bench, as the petitioner has received the impugned notice only on 25.03.2019, the petitioner has preferred the appeal before the appellate authority under Section 45-AA of the ESI Act. But, the authority concerned, without entertaining the said appeal, has rejected the same vide proceedings dated 23.07.2019 on the ground that the appeal is preferred after 60 days. The counsel for petitioner contended that the action of respondent No.3 in rejecting the appeal is arbitrary, illegal and contrary to the findings recorded by the Division Bench of this Court stated supra. Therefore, appropriate orders be passed in the writ petition directing

respondent No.3 to decide the appeal on merits instead of rejecting the same on the ground of delay and laches.

6. The Standing Counsel appearing for respondents has contended that as per Section 45-AA of ESI Act, the authorities have no power to condone the delay of 60 days. Admittedly, in the instant case, petitioner has preferred appeal after 60 days, therefore, the 3rd respondent has no other option except to reject the case of the petitioner. Standing Counsel has further informed the Court that the petitioner has not deposited 25% of the amount, which is a pre-requisite condition for entertaining the appeal. On that ground also, the writ petition is liable to be dismissed.

7. This Court, having considered the rival submissions made by the parties, is of the considered view that a specific finding was recorded by the Division Bench in the orders in W.A.No.21 of 2019, dated 25.03.2019 to the effect that the orders passed under Section 45-A, dated 16.07.2018 were communicated to the petitioner only on 25.03.2019, and thereafter, the Division Bench directed the petitioner herein to prefer the appeal in accordance with Statutory rules and when the orders under Section 45-A, dated 16.07.2018 were communicated to the petitioner only on 25.03.2019, the 60 days period is to be counted from the date of communication i.e. 25.03.2019 only. Therefore, the action of respondent No.3 in rejecting the appeal filed by the petitioner on the ground that the petitioner has filed appeal beyond 60 days, cannot be sustained.

8. Accordingly, the writ petition is allowed and the impugned letter dated 23.07.2019 is set aside. The 3rd respondent is directed to

re-consider the appeal preferred by the petitioner on merits and pass appropriate orders, however, on the condition of petitioner depositing 25% of the demanded amount within a period of two weeks from the date of receipt of a copy of this order. On such deposit of 25% of the amount by the petitioner within two weeks, the appellate authority shall decide the appeal on merits and pass appropriate orders in accordance with law. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

26th September 2019

ajr

