

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.15223 of 2019
Date of decision: 31.05.2019

Shiromani Gurudwara Parbandhak Committee,
Teja Singh Samundari Hall, Amritsar and others Petitioners

Versus

Baljit Singh and another ... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Rishabh Gupta, Advocate for the petitioners.

B.S. WALIA, J.,

[1] Challenge in the writ petition is to order Annexure P-3 dated 05.12.2018 passed by the learned Additional District Judge-cum-Appellate Authority, Amritsar under the Payment of Wages Act, 1936 (hereinafter referred to as 'the Act').

[2] Brief facts of the case leading to the filing of the writ petition are that respondent No.1 filed an application before the Authority under the Act-cum-Assistant Labour Commissioner, Amritsar claiming payment of wages. The aforementioned application was allowed by the learned Authority vide order Annexure P-1 dated 28.03.2018 holding respondent No.1 entitled to pending wages of Rs.1,51,694/- along with interest @ 9% per annum to be paid to respondent No.1 within 90 days and interest being payable w.e.f. the date of filing of the claim application.

[3] The petitioners filed an appeal against order, Annexure P-1 dated 28.03.2018 before the Appellate Authority i.e. the learned Additional

District Judge, Amritsar vide order Annexure P-3 dated 05.12.2018 without going into merits of the case on the preliminary ground of limitation.

[4] Learned counsel for the petitioners contends that certified copy of order, Annexure P-1 dated 28.03.2018 passed by the Authority under the Act-cum-Assistant Labour Commissioner, Amritsar was applied on 05.04.2018, certified copy of the same was prepared on 28.05.2018 and was delivered to the petitioners on 29.05.2018. However, the District Courts were closed from 01.06.2018 to 30.06.2018, consequently, appeal was filed on 05.07.2018. However, counsel for the petitioners inadvertently failed to file an application for condonation of delay in the appeal before the learned Additional District Judge, Amritsar in the mistaken belief that the appeal was within limitation.

Learned counsel contends that non-filing of the application for condonation of delay was under bona fide belief that the appeal was within limitation due to the ensuing vacation period in the District Courts during the month of June as also in view of the appeal having been filed shortly after vacations on reopening of the Courts. Learned counsel further contends that the impugned order has been passed without considering the merits of the appeal. Therefore, the impugned order is liable to be set aside and the matter remanded to the Appellate Authority to consider and decide the same afresh.

[5] I have considered the submissions of learned counsel for the petitioners.

[6] Admittedly, the period of limitation for filing an appeal under Section 17 of the Act is within 30 days from the date of passing of the order by the Authority under the Act-cum-Assistant Labour Commissioner,

“17. Appeal- An appeal against an order dismissing either wholly or in part an application made under sub-Section (2) of Section 15, or against a direction made under sub-Section (3) or sub-Section (4) of that Section may be preferred, within thirty days of the date on which the order or direction was made, in a Presidency-town before the Court of Small Cause and elsewhere before the District Court.”

[7] Admittedly, order passed by the Authority under the Act is dated 28.03.2018. However, certified copy of the order passed by the Authority under the Act was applied only on 05.04.2018. The certified copy of the same was prepared on 28.05.2018 and was delivered to the petitioners on 29.05.2018. However, from 01.06.2018 to 30.06.2018, the District Courts were closed. The appeal was filed by the petitioners only on 05.07.2018. Limitation of 30 days to file appeal expired during the period 01.06.2018 to 30.06.2018. However, since limitation had commenced prior to 01.06.2018, therefore, appeal had to be filed immediately on the re-opening of the Courts after Summer vacations on 01.07.2018 but the same was filed only on 05.07.2018 without filing an application for condonation of delay along with the appeal by setting out circumstances constituting sufficient cause for not filing the appeal within the stipulated period of time. In the absence of the appeal having been filed within the period of time as prescribed under Section 17 of the Act, and that too without moving an application for condonation of delay in late filing of the appeal setting out the circumstances constituting sufficient cause for not filing the appeal within the stipulated period of time, the impugned order dismissing the appeal on ground of limitation is immune from challenge and does not warrant any interference.

[8] The point in issue is squarely covered by the decision of a Hon'ble the Co-ordinate Benches of this Court in case titled as ***Lakhbir Singh, Finger Prints Adviser v. Mrs. Meena Sharma, 1993 (2) PLR 695*** and ***Balraj Singh (dead) through LRs v. Bhupinder Singh, 2016 (5) RCR (Civil) 19***. Relevant extract of ***Lakhbir Singh's case (Supra)*** is reproduced as under :-

“4. After hearing the learned counsel for the parties, I find that there is merit in the contention of the learned counsel. The approach of the appellate authority that the appellant-landlady was not debarred from filing the appeal within 15 days after excluding summer vacation period is totally erroneous and, therefore, by the order under revision cannot be sustained in law. The respondent-landlady was entitled to file the appeal against the order of the learned Rent Controller within 15 days of the passing thereof. She could of course have the benefit of the period spent for obtaining certified copy of the order. If the period of limitation expired during summer vacation, the appeal could still be filed on the first opening day of the Courts. It can in no way be said that if the period of limitation expires during summer vacation, the appellate would have another 15 days after the close of vacation. The period of summer vacation cannot be legally excluded. In a case where an applicant seeks indulgence of the Courts for extension of the time under Section 5 of the Limitation Act, he will have to explain each day's delay. But it cannot be said that an applicant is entitled to file the appeal after excluding summer vacation period. To this extent, the approach of the learned appellate authority is contrary to law. As a consequence, it has to be held that the appeal filed before the appellate authority was barred by time by at least 11 days and, therefore, the impugned order cannot be sustained and has to be set aside.”

[9] Likewise similar view was taken by Hon'ble the Delhi High Court in case titled as ***Bansi Dhar and another vs Firm Bajrang Lal Mahabir Pershad and others, 1976 AIR (Delhi) 107*** by holding that vacation period after pronouncement of judgment cannot be considered time requisite for obtaining certified copy and that in case of period of limitation expiring within vacations, the case (in this case, the appeal) would have to be filed on the reopening day. Relevant extract of the aforementioned decision is reproduced as under:-

“9. With regard to the second case where an application for certified copy has been made after the decree, the Supreme Court noticed in paragraph 10 of the report that there was sharp difference of opinion amongst the High Courts – Bombay, Calcutta and Patna High Courts had taken the view that the said period would constitute a part of the requisite period, while the other High Courts had taken a contrary view. Although the conflict was noticed, the Supreme Court found that it was not necessary to resolve the same in the case in its hand. The conflict, in my opinion, appears to have been resolved by the insertion of the explanation Section 12. Now the time occurring before the making of the application cannot possible constitute as time requisite under Section 12.

In Sections 12, 13, 14, and 15 of the Act, the expression occurring is exclusion of time. Suppose the period of limitation for filing an appeal is 30 days and a time of 20 days is spent in obtaining the certified copy, then the party will have, in fact, 50 days time to file the appeal and the period of limitation actually extended. This is not true of the vacation which does not have the effect of extending the period of limitation, but only allows an act to be performed on reopening after the

vacation. Section 4 of the Limitation Act prescribes that where the prescribed period..... expires on a day when the Court is close, (the matter) may be instituted on the day when the Court reopens. Section 10 of the General Clauses Act also makes a provision enabling the parties to take steps which they are required to take during the prescribed period on the reopening of the Court and office in case the last date of the period expired when the Court or office was closed. The Supreme Court in Harinder Singh v. Karnail Singh, AIR 1957 Supreme Court 271, para 5, held that this was an enabling provision to enable the parties not to suffer for an act of the Court and to do a thing which the law requires it to be done within a prescribed time when it is really possible to do on the reopening of the Court. Therefore, in my opinion, neither Section 4 of the Limitation Act nor Section 10 of the General Clauses Act has the effect of extending the period of limitation. It is only an enabling provision which entitles the party to do on the reopening of the Court what it was required to do at a time when the Court was in vacation. For example, the period of limitation for filing an appeal expires on 30th June and the Court be on vacation till 14th July then if the appeal were filed on 15th July on the reopening day, it would be in time according to Section 4 of the Act; supposing it were filed on 16th July, then the delay in filing the appeal will be not only of one day but will consist of 15 days. The reasons is that period of vacation is unlike provision in Chapter III of the Act not excluded from the period of limitation, but it only enables the party to tide over the period of vacation and perform the requisite act on the reopening day of the Court.”

[10] In the light of the position as noted above, impugned order Annexure P-3 dated 05.12.2018 passed by the learned Additional District

Judge, Amritsar is in accordance with law and does not warrant any interference.

[11] Faced with the aforementioned position, learned counsel for the petitioners prays for liberty to take out proceedings as may be permissible in accordance with law. Needless to mention the petitioners would be at liberty to avail of such remedy in accordance with law as may be permissible.

[12] Finding no infirmity with the impugned order, the writ petition is dismissed in limine, however, with the liberty as noted above.

31.05.2019
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(B.S. Walia)
Judge

1. Whether speaking/reasoned

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Yes/No.
2. Whether reportable

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Yes/ No.