IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1381 OF 2020
WITH
WRIT PETITION NO.1408 OF 2020
WITH
WRIT PETITION NO.1410 OF 2020
WITH
WRIT PETITION NO.1411 OF 2020

ASHOK JALBA DHULE,
SUDAM RAMDAS SURYAWANSHI
DEELIP ADINATH KADAM
MAHADU KALUBA SONWANE
VERSUS
FORBES GOKAK LIMITED THROUGH ITS MANAGER
...
Advocate for the Petitioners : Shri Kulkarni Ashutosh S.
Advocate for the Respondent : Shri Dankh Sachin V.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th March, 2020

Per Court:

1 In all these matters, the identically placed petitioners, workmen, are aggrieved by the identical judgments dated 07.08.2019 delivered by the Appellate Authority under the Payment of Gratuity Act, 1972 and Member, Industrial Court, Aurangabad, by which, their Miscellaneous Applications seeking condonation of delay in filing their appeals under Section 7(7) of the Payment of Gratuity Act, 1972, have been rejected.

2 I have considered the extensive submissions of the learned advocates for the respective sides. Keeping in view that the issue raised before this Court is restricted only to the extent of the refusal of the Industrial Court to condone the delay, that I am not required to advert to the entire submissions of the litigating sides.

3 Suffice it to say that the Controlling Authority and Judge, Labour Court, Aurangabad has dismissed the applications filed by these petitioners under Section 4 of the Payment of Gratuity Act, 1972 on the ground that they have received their entire gratuity amounts through the Voluntary Retirement Scheme (VRS) that was floated by the company. As the Labour Court did not find any deficit in the amounts paid towards gratuity under the VRS, it relied upon the judgment of the Honourable Supreme Court in the matter of ***A.K.Bindal and another vs. Union of India and others , 2003 (5) SCC 163***, in which, the Honourable Supreme Court has concluded in paragraph 34 as under :-

> "34. *This shows that a considerable amount is to be paid to an employee ex-gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as "Golden Handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee.*

After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated."

4 These petitioners approached the Industrial Court for challenging the judgment of the Labour Court. These appeals suffered a delay. A specimen case in Writ Petition No.1381/2020 is being considered to calculate the delay and other cases are somewhat identical.

5 Following sequence of events is material :-

(a) Claim petition was dismissed by the Controlling Authority on 17.04.2017.

(b) After 85 days, the application for certified copies was filed with the Labour Court.

(c) Certified copies were readied on 15.07.2017.

(d) The petitioners received the certified copies on 18.07.2017.

(e) The appeal along with the application for condonation of delay was filed after 48 days, on 06.09.2017.

6 Section 7(7) of the Payment of Gratuity Act, 1972 and the first proviso thereunder reads thus :-

> "*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 appellant authority such amount.*"

7 It is, therefore, obvious from the language of Section 7(7) reproduced above, that as the appropriate Government has prescribed the period of 60 days, undisputedly, for preferring an appeal, the first proviso enables the Appellate Authority to extend the period by a further period of 60 days. The language of Section 7(7) indicates that 60 days limitation is to be calculated "*from the date of the receipt of the order*".

8 The contention of the petitioners is that though they preferred an application for seeking certified copies after 85 days, such applications

are filed within the maximum period of 120 days. As they preferred their appeals after 48 days from the date of the receipt of the certified copies, Section 7(7) would be attracted in favour of these petitioners as 60 days limitation is to be counted from the date of the receipt of the order.

9 The learned advocate for the Management submits that if the interpretation of the petitioners is to be accepted, it would be a mockery of the provisions as have been drafted in the Payment of Gratuity Act, 1972. Due diligence has to be evident and an employee has to apply expeditiously for seeking certified copies. The law will not assist a sleeping litigant. A litigant may come after 05 or 10 years and move an application for receiving certified copies and on the basis of the receipt of such copies, it may be contended that there is no delay.

10 This Court had an occasion to deliver a judgment in the matter of ***Nanded Zilla Dekhrekh Sahkari Sanstha Maryadit vs. Narhar Pralhadrao Kulkarni, (2017) 5 Mh.L.J. 286***, in which, this Court has dealt with the issue of delay and the effect of the first proviso below Section 7(7). In paragraph 19 to 23, this Court has observed as under :-

> "*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.*"

11 A similar provision is found in Section 7(I) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Rule 7(2) with the proviso thereunder under the Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1977. The said Rules permit the enlargement of limitation period of 60 days with another 60 days. Under Section 82 of the Employees' State Insurance Act, 1948, though the period

of limitation for preferring an appeal is 60 days, the law has made Sections 5 and 12 of the Limitation Act, 1963 applicable to Section 82. It was, therefore, held by this Court in paragraphs 27 to 30 in ***Nanded Zilla Dekhrekh (supra)*** as under :-

> "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.*
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> 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).*
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> 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.*
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> 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.*"

12 If the case of the petitioners is to be considered in the light of the submissions canvassed, it would mean that a litigant could approach the court, may be after one year or two years or any period thereafter, for seeking a certified copy and would then prefer an appeal under Section 7(7) by contending that the entire period from the date of the judgment till the receipt of the certified copy will have to be excluded. If this is permitted, it would practically render the first proviso and Section 7(7) meaningless. If the legislature intended to prescribe a limitation of 60 days with a further period of 60 days in a just and reasonable cause, it will have to be interpreted that the legislature did not intend to permit a litigant to file an appeal beyond 120 days.

13 In such circumstances, at best, the time spent by a litigant from the date of filing of his application seeking a certified copy till the date he received the certified copy, could be excluded. In the instant case, if this exercise is undertaken, the first 85 days from the date of the judgment till the filing of the application and 48 days from the date of the receipt of the certified copy till the filing of the appeal, will have to be reckoned and this would be a period of 133 days, which is beyond 120 days available to a litigant.

14 In view of the above, I do not find that the Industrial Court has committed any error in delivering the impugned judgments. These Writ Petitions, being devoid of merit are, therefore, dismissed.

15 At this stage, the learned advocate for the petitioners seeks leave of this Court to prefer a civil appeal before the Honourable Supreme Court of India since they desire to have a verdict from the Honourable Supreme Court as regards the time spent by a litigant from the date of the judgment till the date of the filing of an application for seeking a certified copy. The learned advocate for the management opposes.

16 As such, leave to file a civil appeal before the Honourable Supreme Court for challenging this order is granted, subject to compliance of Order XLV of the Code of Civil Procedure.

kps **(RAVINDRA V. GHUGE, J.)**