

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-1000-2021 (O&M)
Date of Decision : 07.12.2022

The Punjab State Cooperative Supply & Marketing Federation Ltd.

..... Appellant

Versus

Appellate Authority under the Payment of Gratuity Act and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present : Mr. Amrit Singh Kang, Advocate
for the appellant.

VIKRAM AGGARWAL, J

CM-2355-LPA-2021

This is an application under Section 5 of the Limitation Act for condonation of delay of 411 days in filing the present appeal.

Initially, in the application it was simply averred that the delay of 411 days in filing the appeal had occurred on account of the fact that after the passing of the impugned judgment, the complete record was sent to the higher officials for approval and in the process, the delay occurred. However, on 29.08.2022, learned counsel stated that he would file a better affidavit explaining the delay in filing the appeal. Under the circumstances, an affidavit of Sh. Harpinder Singh Dhaliwal, District Manager of the appellant was filed in which it has been averred that the office of the appellant kept on checking the uploading of the judgment dated 10.09.2019 in the High Court website regularly and received a copy of the said judgment on 10.01.2020 from its counsel. Legal opinions to file the appeal were

given by the legal assistant and the Law Officer on 07.02.2020 and 10.02.2020 respectively. The case was found to be fit for filing appeal. Certain other dates have been given wherein different decisions were taken and ultimately the present appeal was filed on 24.11.2020. It has been averred that the Hon'ble Supreme Court of India had directed vide order dated 10.01.2022 that the period from 15.03.2020 to 28.02.2022 would stand excluded for the purposes of limitation.

We have heard learned counsel for the applicant-appellant.

The judgment under challenge was passed on 10.09.2019. Assuming that a copy of the judgment was made available to the appellant on 10.01.2020, though it has nowhere been mentioned as to when the judgment was uploaded and the date on which the counsel supplied the copy would not be relevant, the appeal should have been filed in March 2020. However, the appeal was filed on 24.11.2020. In our opinion, the delay has not been properly explained. However, considering the fact that the applicant is a Public Sector Undertaking and normally some time is taken by such corporations etc. in taking a decision regarding filing of appeals etc. and also because normally matters should be heard on merits and should not be rejected on technicalities, we are inclined to condone the delay.

In view of the aforesaid, the application is allowed and the delay of 411 days in filing the appeal is condoned.

LPA-1000-2021

This appeal challenges the judgment dated 10.09.2019, passed by the learned Single Bench vide which the writ petition filed by the appellant for quashing the order dated 10.08.2017 whereby respondent No.3 was held to be entitled to payment of gratuity and order dated 23.04.2018 (Annexure P-3), dismissing the appeal of the appellant against the order dated 10.08.2017, was

Dismissed.

The facts, briefly put, are that the appellant filed a writ petition challenging the aforesaid orders. The case of respondent No.3 was that he had been appointed as an Accountant in Markfed on 27.12.1979 and superannuated on 30.11.2016. An application was filed on 13.10.2016 for the payment of gratuity under the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act'). A sum of Rs.5,01,457/- was claimed as gratuity which was much more than the amount of gratuity i.e. Rs.3,34,305/-, paid to him. The balance amount of Rs.1,67,152 alongwith interest @ 12% was sought. The application was allowed by respondent No.2 vide order dated 10.08.2017 (Annexure P-2 with the writ petition) (reference to annexures hereinafter shall refer to annexures with the writ petition). The balance amount alongwith interest @ 9% was directed to be paid to respondent No.3 from the date of the filing of the application. The appeal filed by the appellant was dismissed vide order dated 23.04.2018 (Annexure P-3) on the ground of the same being time barred.

Against the said orders dated 10.08.2017 and 23.04.2018 (Annexures P-2 and P-3), the writ petition was filed which has also been dismissed vide order dated 10.09.2019.

Aggrieved against the said order dated 10.09.2019, passed by the learned Single Bench, the instant appeal has been filed.

We have heard learned counsel for the appellant and have perused the record.

Learned counsel for the appellant has assailed the order passed by the learned Single Bench on the ground that the learned Single Bench did not appreciate the matter from the correct perspective and that the Appellate Authority had erred in dismissing the appeal only on the ground of limitation. It has been argued that even the learned Single Bench did not appreciate the merits of the case

and upheld the order passed by the Appellate Authority on the ground of limitation alone. It has been contended that the amount of gratuity, as assessed by the Controlling Authority, was not payable to respondent No.3 as he had joined the appellant on 27.12.1979 and not on 11.09.1979 and, therefore, the active service on attaining the age of superannuation on 30.11.2006 came to 26 years 11 months and 03 days. It has been contended that the Controlling Authority had wrongly held that respondent No.3 had worked with the appellant for 39 years.

Admittedly, the balance in gratuity was assessed by the Controlling Authority vide order dated 10.08.2017 (Annexure P-2). The appeal against the said order could have been filed within 60 days as per the provisions of Section 7 (7) of the Act. A further period of 60 days could have been granted if sufficient cause for the delay was shown. Section 7 reads as under:-

- (1) "A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.
- (2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.
- (3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.
- (3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the

Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]

(4)

(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.]

(c)] The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

(d)The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e)As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit -

(i) to the applicant where he is the employee; or

(ii)where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5)

For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents,
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses.

(6)

Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, 1860 (45 of 1860).

(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.]”

8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.”

However, the appeal was filed on 18.12.2017 i.e. much after the lapse of the prescribed period as also that of the extended period. Under these circumstances, the Appellate Authority dismissed the appeal on the ground of delay alone as it was not empowered to go into the merits of the case once the appeal was barred by limitation and there was no power with the Appellate Authority to further condone the delay.

The learned Single Bench examined the matter threadbare and also came to the conclusion that the appellant had not been able to make out any sufficient cause for the delay caused in filing the appeal. It was held that the papers had been returned on 28.10.2017 and still the appeal was filed on 18.12.2017 and no reason was shown for the appeal not having been filed immediately after 28.10.2017. Learned Single Bench relied upon the judgment of this Court in the case of **Inspector General of Prison and Jail-cum-Deputy Commissioner, UT, Chandigarh vs. Rachpal Singh and Ors. 2016 (148) FLR 1101 (P&H).**

Another Single Bench has also taken the same view in the case titled as **HSMITC Ltd. Versus M.R.Arora and Others (CWP-21545 of 2015)**, decided on **19.08.2019**. In this case, the Appellate Authority had entertained an appeal beyond the period of limitation and had condoned the delay. While deciding the matter, this Court took the following view:-

*14. A Three Judge Bench of the Hon'ble Supreme Court in **The Commissioner of Sales Tax, U.P., Lucknow v. M/s Parson Tools and Plants, Kanpur, 1975 (4) SCC 22**, while dealing with the principles of the applicability of the Limitation Act viz-a-viz the Special/General Statute, in para Nos. 17 and 18, held as follows:-*

"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 up to 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 engrafting, 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. We will close the discussion by recalling what Lord Hailsham at P.11 in **Pearlberg v. Varty (1972) 2 All England Reporter 6**, has said recently, in regard to importation of the principles of natural justice into a statute which is a clear and complete Code, by itself:*

"It is true of course that the courts will lean heavily, against any construction of a statute which would be manifestly fair. But they have no power to amend or supplement the language of a statute merely because in one view of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than a statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment.

xxx xxx xxx xxx"

*15. The Three Judge Bench of the Hon'ble Supreme Court in **M/s Consolidated Engg. Enterprises v. Principal Secy. Irrigation Deptt. And others, 2008 (2) RCR (Civil) 897**, while considering the applicability of the provisions of the Limitation Act to the Arbitration*

and Conciliation Act, 1996, has, in para Nos. 26 and 27, laid down the general principles, which read as follows:-

"26. Where the Schedule to the Limitation Act prescribes a period of limitation for appeals or applications to any court, and the special or local law provides for filing of appeals and applications to the court, but does not prescribe any period of limitation in regard to such appeals or applications, the period of limitation prescribed in the Schedule to the Limitation Act will apply to such appeals or applications and consequently the provisions of sections [4](#) to [24](#) will also apply. Where the special or local law prescribes for any appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of section [29\(2\)](#) will be attracted. In that event, the provisions of section [3](#) of Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to Limitation Act, and for the purpose of determining any period of limitation prescribed for the appeal or application by the special law, the provisions contained in sections [4](#) to [24](#) will apply to the extent to which they are not expressly excluded by such special law. The object of section [29](#) (2) is to ensure that the principles contained in sections [4](#) to [24](#) of Limitation Act apply to suits, appeals and applications filed in a court under special or local laws also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions.

27. It may be noticed at this juncture that the Schedule to the Limitation Act prescribes the period of limitation only to proceedings in courts and not to any proceeding before a Tribunal or quasi-judicial authority. Consequently section [3](#) and section [29\(2\)](#) of Limitation Act will not apply to proceedings before Tribunal. This means that the Limitation Act will not apply to appeals or applications before Tribunals, unless expressly provided."

16. Another Bench of Three Judges in **Commissioner of Customs and Central Excise v. Hongo India (P) Ltd., (2009) 5 SCC 791**, has held as follows:-

" It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law here in this case is Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete Code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections [4](#) to [24](#) of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court."

17. The Supreme Court in **P.Radha Bai and others v. P.Ashok Kumar and another, 2018 (4) RCR (Civil) 571**, has held that the limitation period prescribed by the Special Law or the Local Law will prevail over the limitation period prescribed in the Schedule of the Limitation Act. It has further been held that where the Special Law or the Local Law provides an outer limit for condonation of delay and further qualifies that it cannot be condoned beyond that particular period, the said period cannot be extended. The intent of the legislature has to be respected which had fixed an outer boundary period for condonation of delay beyond the period which has been

prescribed for doing a particular act such as filing an appeal.

18. In view of the above, it can be concluded that the Limitation Act would be applicable only in a case where the Local or Special Act makes no provision for limitation. But where limitation period is prescribed by Special Law or Local or General Law, it will prevail over the period as prescribed in the Schedule to Limitation Act. The provisions of the Limitation Act would apply to the Local/General or Special Act when no provision for limitation has been provided by such Act but where certain limitation period has been prescribed by Special Law or Local or General Law, it would prevail over the limitation period prescribed under the Schedule of the Limitation Act, meaning thereby that the provisions of the Limitation Act are necessarily excluded. Further, where a certain period of limitation for filing an application or appeal is prescribed by a particular Statute and provides the maximum period for which the period may be extended on sufficient cause being shown, then the Court/Tribunal has no jurisdiction to entertain the same treating it to be within limitation by condoning the delay beyond such maximum time limit specified by the Statute.

19. Thus, it is held that the provisions of the Limitation Act, 1963 would not be applicable to the appeal filed under sub-section (7) of section 7 of the Payment of Gratuity Act, 1972 as the Special Act will have precedence and would apply over the General Act. The Appellate Authority cannot entertain an appeal filed under Section 7 (7) under the Payment of Gratuity Act, 1972, by condoning the delay beyond the maximum specified permissible period provided therein.”

The aforesaid judgments made it amply clear that the extended period of 60 days provided under Section 7 (7) of the Act is the maximum period within which an appeal can be filed and the provisions of the Limitation Act do not apply to the same. Under the circumstances, an appeal can be filed within a period of 120 days in all and any appeal beyond 120 days would be time barred. Infact not

learning from its previous mistakes, even the present appeal has been filed with a further delay of 411 days. Though this delay has been condoned as it was deemed appropriate that the matter should be heard on merits, the conduct of the appellant in causing repeated delays in pursuing its remedies cannot be overlooked. We, therefore, do not find any reason to interfere in the view taken by the learned Single Bench.

In view of the aforementioned facts and circumstances, we do not find any merit in the present appeal and the same is hereby dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

07.12.2022
mamta

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No