IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18931 of 2019

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ICICI Bank Limited a Banking Company within the meaning of the Banking Regulation Act, 1949 and registered under the Companies Act, 1956, carrying on business at its registered office at ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara and amongst other also at its office at ICICI Bank, Zonal Office, Sahdeo Mahto Marg, S.K. Puri, Boring Road, Patna, Bihar within the jurisdiction of this Hon'ble Court represented through their Legal Manager Mr. Purushottam Kumar.

... ... Petitioner/s

Versus

1. The State of Bihar through Secretary Labour Department, Patna.
2. The Chief Inspector of Factories, Bihar cum Competent Authority under Bihar Maternity Benefits Rules, 1964, having its office at Niyojan Bhavan, Patna.
3. Deputy Labour Commissioner, Patna Division, Patna, Bihar.
4. Assistant Labour Commissioner, Patna cum Inspector under Maternity Benefit Act, 1961, having its office at Niyojan Bhavan, Patna.
5. Smt. Amrita Sinha, Choudhary Bhavan, Maa Santoshi Path, Street No.10, Gourakshni Gajara, Sasaram, Bihar- 821115.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prabhakar Nath Rai, Advocate
		Mr. Manish Kumar, Advocate
For the Respondent/s	:	Mr. Ravi Ranjan, AC to SC-22
For the ICICI Bank	:	Mr. Manish Kumar, Advocate
For Respondent No.5	:	Mr. Sumeet Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 29-03-2023

The petitioner assailed the order dated 03.06.2019 passed by the Acting Chief Inspector of Factories -cum-

Competent Authority, under Bihar Maternity Benefit Rules, 1964 in which the appeal preferred under Section 17(3) of the Maternity Benefit Act, 1961 (hereinafter referred to as 'the Act of 1961) read with Bihar Maternity Benefit Rules, 1964 has been rejected.

2. The claim of the respondent No.5 is that while she was on maternity leave her payment was wrongfully withheld and further she was dismissed from service on account of her absence from work during the maternity period.

3. Learned counsel for the petitioner – Bank submits that they had preferred an appeal within 30 days in terms of Section 17(3) of the Act of 1961, but the same has not been decided on merits and has been rejected only on the ground of being filed beyond the period of limitation.

3.1. Learned counsel submits that the order was passed on 25.04.2019 which was received in the office on 26.04. 2019 and they had preferred an appeal on 24th of May, 2019 which was within the period of 30 days. It is further submitted that the said appeal was treated to have been filed after the period of 30 days and the extension which was sought by the petitioner – Bank vide their another letter dated 24th of May 2019 was rejected vide impugned order dated 03.06.2019.

Learned counsel further submits that a chance should be given to the petitioner – Bank to prefer an appeal and the same should be decided on merits.

3.2 Learned counsel further submits that even if the appeal is said to have been registered on 25th of May, 2019 then too it comes within the period of 30 days as prescribed under Section 17(3) of the Act of 1961 and, therefore, the same should have been decided on merits and not rejected on the ground of limitation.

4. Learned counsel appearing for respondent Nos. 1, 3 and 4 has placed before this Court the original record wherein this Court finds that the memo of appeal has been filed along with a letter dated 24th of May, 2019, but the receipt of the said letter and appeal is dated 25th of May, 2019. There is another letter submitted by the bank dated 24th of May, 2019 which has been received on 24th of May, 2019 wherein the Bank has sought seven day's time to file appeal.

5. Per contra, Mr. Sumeet Kumar Singh, learned counsel appearing for respondent No.5 submits that the order passed on 25th of April, 2019 was admittedly received by the respondent on 25th April 2019, hence, there was no reason to wait for 30 days to file an appeal. He further submits that even before the adjudicating authority, the petitioner – Bank had not been able to place any document in support of their contentions while the respondent had proved that she had been prevented to present herself for attendance on account of her pregnancy. In view of the provisions of the Act of 1961, the order passed by the Chief Inspector of Factories did not warrant any interference.

6. I have considered the submissions. This Court would not enter into the merits and veracity of the order dated 25.04.2019 passed by the respondent No.4, Assistant Labour Commissioner, Patna-cum-Inspector. Question arises only to the extent whether the appeal should have been heard on merits or the same was liable to be rejected on the ground of limitation.

7. This Court is satisfied that the petitioner has filed the appeal which was received on 25th of May, 2019.

8. Question arises whether the same would fall beyond the period of 30 days. Clause 9 of the **General Clauses Act, 1897** (hereinafter referred to as 'the General Clauses Act') reads as under :-

> *9. Commencement and termination of time.—(1) In any 1[Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of*

days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(2) This section applies also to all 2[Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Section 17(3) of the Act of 1961 reads as under :-

(3) Any person aggrieved by the decision of the Inspector under sub-section (2) may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority.

9. Upon perusal of the aforesaid provision, it is apparent that the word 'from the date on which such decision is communicated' is to be understood that the day on which it is communicated shall be excluded as the word 'from' has been used. Thus, 30 days would exclude 25.04.2019 and, therefore, the date 25.04.2019 shall be excluded. Therefore, counting from 25^{th} April, 2019, 30 days would include 25^{th} of May, 2019, as the 30^{th} day. In terms of General Clauses Act, the appeal would, therefore, be within 30 days.

10. Apart from above, it is also noticed that the provision uses word 'may' and, therefore, the limitation is directed and not mandated in terms of the judgement passed by

the Hon'ble Supreme Court in ***Government of Maharashtra (Water Resources Department) Represented by Executive Engineer vs. Borse Brothers Engineers & Construction Pvt. Ltd***. reported in ***2021 (6) SCC 460***.

11. In view thereof, the respondent No.2, namely, the Chief Inspector of Factories is directed to decide the appeal on merits within a period of 30 days henceforth treating it to be within limitation. Any of the parties who are aggrieved of the said order would be free to challenge the same. It is also directed that respondent No.5 shall be given an opportunity of hearing by the appellate authority

12. With the aforesaid observations and directions, the writ petition stands disposed of

(Sanjeev Prakash Sharma, J)

Ashwini/-
Item No.37

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.04.2023
Transmission Date	NA