



W.P. No. 31906 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 31906 of 2023

and

W.M.P. Nos. 31489 and 31490 of 2023

C. Murali

... Petitioner

-VS-

1. The Commissioner HR & CE,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai 600 006.
2. The Joint Commissioner HR & CE,
Vellore.
3. The Joint Commissioner/Executive Officer,
Arulmigu Subramania Swamy Thirukoil,
Thiruthani 631 209,
Thiruvallur District.
4. The Board of Trustee,
Arulmigu Subramania Swamy Thirukoil,
Thiruthani 631 209,
Thiruvallur District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus calling for the records of the Second Respondent order made in R.C.No.971/2020/B1 dated 10.12.2020 and quash the same and consequently, take the statutory appeal preferred by the Petitioner under Section 56(2) of HR & CE Act in N.Dis.58955/2019 and dispose the same on merits.



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For Petitioner : Ms. E.Gayathri
for M/s. R.Gopinath

For Respondents : Mr. N.R.R. Arun Natarajan,
Special Government Pleader
(for R1 & R2)

Mr. R.Gopalan (for R3 and 4)

ORDER

Heard Ms. E.Gayathri, Learned Counsel for the Petitioner, Mr. N.R.R.Arun Natarajan, Learned Special Government Pleader appearing for the First and Second Respondents and Mr. R.Gopalan, Learned Counsel for the Third and Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent by Proceedings in Na. Ka. No. 2231/2017/A2 dated 14.03.2018 removed the Petitioner, who was employed in its Temple, from service under Section 56(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the HR & CE Act' for short), which was challenged by the Petitioner in the Writ Petition in W.P. No. 9575 of 2018 filed on 11.04.2018 before this Court. However, this Court declined to entertain the Writ Petition taking note of the availability of the



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alternative remedy to prefer appeal against that order in Section 56(2) of the HR & CE Act and disposed that Writ Petition by order dated 08.07.2019

holding as follows:-

“7. In the said circumstances, the writ petition is dismissed on the ground of availability of alternate remedy, as indicated in the impugned order. It is open to the petitioner to raise all objections as he deems fit before the Appellate Authority and the Appellate Authority shall consider the same and pass a reasoned order.

8. The petitioner is directed to pursue his appeal remedy before the respondent or any other competent authority and submit an appeal within a period of two weeks from the date of receipt of copy of this order. On such appeal being filed, the respondent/the appellate authority shall consider the same and pass orders on merits and in accordance with law within a period of three months thereafter.”

3. According to the Petitioner, he had preferred such appeal on 30.09.2019 before the First Respondent, but it was returned on 03.10.2019 stating, *inter alia*, that the appeal lies to the Second Respondent. The Second Respondent by



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Order in Rc. No. 971/2020/B1 dated 10.12.2020 declined to entertain the appeal as time barred referring to the decision of the Hon'ble Supreme Court of India in ***Ganesan -vs- Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board*** [(2019) 7 SCC 108], which is assailed in this Writ Petition.

4. It is not in dispute that the Petitioner was entitled to prefer an appeal against the said order under Section 56(2) of the HR & CE Act before the Second Respondent within one month from the date of receipt of its copy. It has been held by the Hon'ble Supreme Court of India in ***Ganesan -vs- Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board*** [(2019) 7 SCC 108] that the applicability of Section 29(2) of the Limitation Act, 1963, is restricted to any suit, appeal or application filed in a 'Court' and cannot be pressed in service with regard to filing of appeal before the Statutory Authorities and Tribunals provided in a special or local law. In the present case, though it cannot be said that the Petitioner has presented the appeal under Section 56(2) of the HR & CE Act before the Second Respondent within the prescribed time limit of one month from the date of receipt of copy of the Proceedings in Na. Ka. No. 2231/2017/A2 dated 14.03.2018 passed by the Third Respondent, it cannot be lost sight of the fact that in the interregnum,



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he had been pursuing the matter by way of Writ Petition in W.P. No. 9575 of 2018 filed in this Court and before the First Respondent.

5. The question arises as to whether the said period from the date of filing of the said Writ Petition till the appeal was actually presented to the Second Respondent could be excluded for the purpose of reckoning limitation in terms of Section 14 of the Limitation Act, 1963, the relevant portions of which reads as follows:-

14. Exclusion of time of proceeding bona fide in court without jurisdiction.—

....

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.



....

Explanation.—For the purposes of this section,—

- (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;
- (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;
- (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction

In this regard, it would be useful to refer to the decision of the Hon'ble Supreme Court of India in ***Consolidated Engineering Enterprises -vs- Principal Secretary, Irrigation Department*** [(2008) 7 SCC 169], where it has been observed as follows:-

21. Section 14 of the Limitation Act deals with exclusion of time of proceeding *bonafide* in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:



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- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a court.

In another ruling in *M.P.Steel Corporation -vs- Commissioner of Central Excise* [(2015) 7 SCC 58], it has been discussed as extracted below:-

“10. We might also point out that Conditions 1 to 4 mentioned in the *Consolidated Engineering Enterprises -vs- Principal Secretary, Irrigation Department* [(2008) 7 SCC 169] have, in fact, been met by the Plaintiff. It is clear that both the prior and subsequent proceedings are civil proceedings prosecuted by the same party. The prior proceeding had been prosecuted with due



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diligence and in good faith, as has been explained in ***Consolidated Engineering Enterprises -vs- Principal Secretary, Irrigation Department*** [(2008) 7 SCC 169] itself. These phrases only mean that the party who invokes Section 14 should not be guilty of negligence, lapse or inaction. Further, there should be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party.

XXX XXX XXX

49. the expression “the time during which the plaintiff has been prosecuting with due diligence another civil proceeding” needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice.”

(emphasis supplied)

The Hon'ble Supreme Court of India in the decision in ***Sesh Nath Singh -vs- Baidyabati Sheoraphuli Co-operative Bank Limited*** [(2021) 7 SCC 313] has expressed the following view:-



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75. Section 14 of the Limitation Act is to be read as a whole. A conjoint and careful reading of sub-sections (1), (2) and (3) of Section 14 makes it clear that an applicant who has prosecuted another civil proceeding with due diligence, before a forum which is unable to entertain the same on account of defect of jurisdiction or any other cause of like nature, is entitled to exclusion of the time during which the applicant had been prosecuting such proceeding, in computing the period of limitation. The substantive provisions of sub-sections (1), (2) and (3) of Section 14 do not say that Section 14 can only be invoked on termination of the earlier proceedings, prosecuted in good faith.

The same view has been reiterated in the decision in *M/s. Laxmi Srinivasa R and P Boiled Rice Mill -vs- State of Andhra Pradesh* (Order dated 14.11.2022 in Civil Appeal No. of 2022 arising out of SLP (C) No. 11225 of 2022) in the following words:-

3. It is an accepted position that the appellant had filed a writ petition before the High Court on 24.02.2018, which was not



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entertained vide the order dated 07.03.2018 on the ground that the appellant should approach the Appellate Authority. The appellant is entitled to ask for exclusion of the said period in terms of Section 14 of the Limitation Act, 1963. Exclusion of time is different, and cannot be equated with condonation of delay. The period once excluded, cannot be counted for the purpose of computing the period for which delay can be condoned. Of course for exclusion of time under Section 14 of the Limitation Act, 1963, the conditions stipulated in Section 14 have to be satisfied.

4. In the facts of the present case, we find that the period from the date of filing of the writ petition on 24.02.2018 and the date on which it was dismissed as not entertained viz. 07.03.2018, should have been excluded. The writ proceedings were maintainable, but not entertained. *Bonafides* of the appellant in filing the writ petition are not challenged. Further, immediately after the dismissal of the writ petition, the appellant did file an appeal before the Appellate Authority. On exclusion of the aforesaid period, the appeal preferred by the appellant would be



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within the condonable period. Accordingly, we direct that the application for condonation of delay filed by the appellant would be treated as allowed. The delay is directed to be condoned.

Having due regard to the dictum laid down in the aforesaid binding decisions, it would not be possible to uphold the impugned order passed by the Second Respondent declining to entertain the appeal preferred by the Petitioner under Section 56(2) of the HR & CE Act without examining the applicability of Section 14 of the Limitation Act, 1963 *viz-a-viz* the relevant periods that would have to be excluded for reckoning limitation. In that view of the matter, the impugned order passed by the Second Respondent is set aside and the matter is remitted for fresh consideration in the light of the said legal principles to be followed for determining whether the appeal is in time.

6. In view of the foregoing discussion, the matter shall be listed for next hearing before the Second Respondent on 19.06.2024 for conducting enquiry in the matter after issuing due notice to the Petitioner and the Third and Fourth Respondents and if the Second Respondent is not able to take up the matter on the said date, the date to which it is adjourned shall be informed to the parties



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under written acknowledgment. It shall be ensured by the Second Respondent that there are atleast two effective hearings every month showing progress of the case and full opportunity of hearing is afforded to all parties concerned including the Petitioner and the Third and Fourth Respondents following the prescribed procedure in consonance with the principles of natural justice, that reasoned orders are passed dealing with each of the contentions raised with reference to the evidence lead by the parties, initially on the question of limitation in filing the appeal, uninfluenced and uninhibited by the impugned order which has been set aside, and depending upon its outcome, the further course of action in the appeal would follow in accordance with law. It is needless to clarify here that no view has been expressed by this Court on the merits of the controversy in that regard.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 22.05.2024.

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To

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2. The Joint Commissioner HR & CE,
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P.D. AUDIKESAVALU, J.

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