02.04.2025
Item No. 05
Crt.No.02
b.r.

WPA 4162 of 2025

Union of India & Anr.
-vs-
Smt. Nilima Karmakar & Ors.

Mr. Shib Chandra Prasad
Mr. Guddu Singh
.... For the petitioners.

Mr. Bikash Shaw
Mr. Sk. S.N. Islam
..... for the Respondent no.1.

Affidavit of service filed in Court today, is taken on record.

Mr. Shib Chandra Prasad, learned Counsel with Mr. Guddu Singh, leaned advocate appears for the petitioners.

Mr. Bikash Shaw, learned counsel appears for the respondent no.1.

The rest of the respondents are not represented.

The subject matter in dispute is an amount of **Rs. 54,915/-** adjudicated to have been payable to respondent no.1, wife of the deceased employee.

The inescapable facts are only narrated.

On **February 11, 2020**, the jurisdictional Controlling Authority passed its order holding that the said sum is payable on account of gratuity at **page-26** to the writ petition. On **February 11, 2020,** the statutory Form being **Form-R** was issued and the order of the Controlling Authority was duly communicated to the petitioners as well as the **respondent no.1, page-25** to the writ petition.

Being aggrieved with the said order of the Controlling Authority, the petitioners preferred the statutory appeal under **Sub-Section (7) to Section 7 of the Payment Of Gratuity Act, 1972 (for short, 1972 Act)** on **December 20, 2021.** The appeal was dismissed by the impugned order dated **October 10, 2023 at page-28** to the writ petition. The necessary Certificate was issued under **Section 8 of 1972 Act on March 16, 2023.** The instant writ petition was filed on **February 17, 2025.**

Through this writ petition, the petitioners have impugned the said order of the appellate authority dated **October 10, 2023** and the order of the Controlling Authority dated **February 11, 2020.**

Mr. Shib Chandra Prasad, learned counsel appearing for the petitioners submits, at the outset, that the deceased husband of the respondent no.1, the original beneficiary of the gratuity amount was not an employee of the respondent no.1 directly or indirectly. The Controlling Authority had passed its order dated **February 11, 2020** ex parte against the petitioners. Immediately, the order was communicated, the petitioners preferred the appeal on the day mentioned above. The writ petitioners due to administrative reason could not make the mandatory pre-deposit to sustain the appeal as required to be deposited **under Sub-Section (7)** to **Section 7 of 1972 Act.** On this solitary ground, the appeal was dismissed by the impugned order dated **October 10, 2023** and resultantly the Certificate was issued on **March 16, 2023.**

Mr. Shib Chandra Prasad submits that if the delay is condoned as mentioned under the statute, the petitioners shall deposit the statutory deposit forthwith and the appeal may be heard and disposed of within a specific time frame.

Per contra, Mr. Bikash Shaw, learned counsel appearing for the respondent no.1, the present beneficiary of the gratuity amount submits that the time frame specified for deposit is a specific statutory provision as laid down under the proviso to **Sub-Section (7)** to **Section 7 of the 1972 Act**, it is a statutory mandate. The impugned order shows that

notices were repeatedly served upon the appellant but the appellant failed and neglected to deposit the statutory deposit for its alleged administrative reasons. Learned counsel further submits the period of limitation prescribed under special statute cannot be extended.

He further submits that the present beneficiary being the respondent no.1 is the widow of the deceased employee, who died on **March 7, 2017** and for last **eight years,** the amount has not been paid to her. Learned counsel for the respondents submits that this writ petition is without any merit and should be dismissed.

Mr. Shaw has placed the certificate issued by the jurisdictional authority for realization of the sum dated **March 16, 2023**, a copy of the same is taken on record. A copy has also been handed over to Mr. Prosad, in Court today.

After considering the rival contentions of the parties, and upon perusal of the materials on record, this Court thinks that the inescapable facts have already narrated above and there is no further requirement of its reiteration. The facts narrated, at the outset, would demonstrate that from the date of the said **Form-R** all most few months shorter than **two years**, the appeal was preferred by the petitioners on **December 20, 2021.** **Sub-Section (7)** to **Section 7 of 1972 Act** provides that any person aggrieved by an order under **Sub-Section (4)** may, within **60 days** from the date of 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. The proviso states that the appropriate Government or the appellate authority, as the case may be, may, if 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.** The second proviso, *inter alia*, provides for a mandatory deposit of an amount equal to the amount of gratuity required to be deposited **under Sub-Section (4)** or deposits with the appellate authority such amount. The records of the proceeding and the finding in the impugned order passed by the appellate authority dated **October 10, 2023** clearly shows that the amount was not deposited within the time frame specified under the statute and in any event, the memorandum of appeal was filed much after the statutory period, almost a few months less than **two years** as stated above.

On a plain and meaningful reading of the provisions laid down under **Sub-Section (7) to Section 7 of the 1972 Act** including the two proviso there under, it appears that the period for filing appeal was

sixty days from the date of receipt of the order and the same can at the highest be extended by another **sixty days** at the discretion of the appellate authority. The legislative intent was not to extend such period beyond the said second time stipulation of **sixty days** as provided under second proviso. The appellate authority is the creature of the special statute which has to and should exercise its power and authority within the statutory framework and cannot travel beyond it. Therefore, in any event the statutory appellate authority under the said **1972 Act** cannot travel beyond the said second time frame of **sixty days** as provided under the said second proviso.

The law is well settled, Court cannot amend or alter any provision of a statute, neither can it supplant any provision in the statute. The legislature is the framer of law and the Court interprets and explains the same. **1972 Act** does not provide for the power to condone the delay in filing the appeal beyond the said second time stipulation of **sixty days** as provided under the second proviso. The period of limitation prescribed by a special statute cannot be extended by the Court, and no equitable ground could be considered for extending the time for limitation to file the statutory appeal or to deposit the statutory deposit.

From the above discussions, it is clear that the appellate path for the petitioners were never opened in view of the non-compliance of the mandatory provisions of the statute, since the petitioners has not deposited the statutory deposit within time and the appeal was not also filed within time provided under the statute.

Therefore, the question of adjudicating anything on merit did and could not arise before the appellate authority at the stage when the impugned order was passed, as the appeal was not even registered on the board in accordance with law.`

The Hon'ble Supreme Court, ***In the matter of: Fairgrowth Investment Limited –vs- Custodian reported at 2004 0 Supreme (SC) 1316: (2004) 11 SCC 472*** had observed and held as under:-

> *"24. Finally, Section 29(2) of the Limitation Act speaks of application of the provisions contained in Sections 4 to 24 "only in so far as, and to the extent to which they are not expressly excluded by such special or local laws". This language together with our earlier reasoning, particularly with regard to L.S. Synthetics, would answer the further question raised by the appellant, namely, whether the question of exclusion of the provisions of the Limitation Act must be separately considered with reference to different provisions of a Special/Local Act or in connection with the*

provisions of the Special/Local Act, as a whole, by affirmation of the first alternative. We are therefore not called upon to decide whether claims either preferred for the first time before the Special Court or transferred to the Special Court under Section 9-A(2) would attract the provisions of Sections 4 to 24 of the limitation Act. It is enough for the purpose of this appeal to hold that Section 29(2) of the Limitation Act, 1963 does not apply to proceedings under Section 4(2) of the Special Courts (Trial of Offences Relating to Transactions in Securities), Act 1992. Since the appellants petition of objection had been filed much beyond the period of prescribed under that Section, the Special Court was right in rejecting the petition in limine. The appeal is accordingly dismissed but without any order as to costs."

In view of the foregoing discussions and reasons, this Court of the firm and considered view that the appellate authority had rightly rejected the appeal and dismissed it. The writ petition is devoid of any merit.

The order passed by the appellate authority dated **October 10, 2023** not interfered with and stands **affirmed.** The order dated **February 11, 2020** passed by the Controlling Authority also stands **affirmed**.

In view of the above, the **petitioner no.2** is directed to pay the said sum of **Rs.54,915/-** along with **interest**, as directed to be paid in terms of the

Certificate issued by the jurisdictional authority dated **March 16, 2023** positively within a period of **four weeks** from the date of communication of this order in favour of the **respondent no.1.**

Accordingly, this writ petition, **WPA 4162 of 2025** stands **dismissed**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)