20.05.2025
Item No.15
BR

WPA 10658 of 2025
Governing Body of B.P. Poddar Institute of Management and Technology and another
-vs-
The State of West Bengal and others

Mr. Ranjoy De, Sr. Adv.,
Mr. Kanak Kiran Bandyopadhyay
... for the petitioners

Mr. Arjun Ray Mukherjee,
Mr. Joyjeev Medhi
...for the respondent no. 4

Mr. Somnath Ganguly, Sr. Adv.,
Ms. Sangeeta Roy
... for the State

1. The writ application has been preferred against an order passed by appellate authority on 22.1.2025 wherein the appellate authority has been pleased to dismiss the appeal on the ground that the appeal was barred by limitation. The prayer for condonation of delay was not allowed by the appellate authority.

2. The relevant findings of the appellate authority is as follows:-

> *"It is observed that the appeal has arisen out of primary point of jurisdiction of the CA and against impugned order of the CA dtd.12.2.24 which was received by the appellant on 19.3.24. The appellant decided to apply for the certified copy on 14.06.24 and got it on 01.8.24 and filed the appeal on 01.8.24.*

Perusing the above facts it is seen that the appellant has applied for the certified copy beyond the statutory period of 60 days i.e. 87 (eighty seven) days. Based on the contention of the appellant it appears that appellant rather than relying on the primary statutory limit of filing the appeal, has relied on the exceptional scenario assuming that it would be allowed further sixty days though such relaxation is not an automatic choice but depends upon the special circumstances and satisfaction of the appellate authority.

The appellant sides has also relied on the fact they were handicapped by the in ordinate delay to receive the certified copy.

It's a fact that appellant was not provided by certified copy before 01.08.24. But that does not justify the in ordinate delay on it's part to even show it's intention to appeal by applying for the certified copy of them impugned order of the CA within prescribed limit of 60 days.

To my opinion the relaxation provided under the first provision of sub section 7 of section 7 of the PG Act 1972 should only be exercised with caution and not as a general rule.

Otherwise the spirit of the PG Act 1972 which is an unique beneficial legislation would be defeated.

Thus I find no ground to condone the delay in filing the appeal by the appellant. The appeal is rejected. The appellant and OP are free to pursue their case on merit before the CA."

3. Learned counsel for the respondent/employee has vehemently opposed the prayer for setting aside of the order under appeal, on the ground that the appellate authority has rightly decided the point of limitation and on not condoning the said delay has rightly dismissed the appeal.

4. On the other hand, learned counsel for the petitioners submits that he has preferred the appeal within the period of 120 days (60+60) on showing sufficient cause before the appellate authority, who without proper application of mind has rejected the prayer of the petitioners and has dismissed the appeal on erroneous findings.

5. It is submitted by the learned counsel for the petitioner that he is entitled to deduct the period during which the certified copy of the order was not made available to the petitioners to prefer the appeal.

6. Learned counsel for the petitioners has relied upon the judgment passed by the Division Bench of this Court in ***Agent, Kalipahiri Group of Mines, Eastern Coalfields Ltd. –vs- Union of India and others,*** reported in **2018 SCC OnLine Cal 16999.** Paragraph 16 is quoted below :-

> "***16.*** *It will not be out of context to mention that the appellate authority being the creature of a statute is vested with jurisdiction to condone the delay beyond the permissible period as provided under the statute. The period up to which the prayer for condonation of delay can be accepted is statutorily provided in this case, as 60 days with further period of 60 days upon condonation of delay as per sub-section (7) of Section 7 of the Payment of Gratuity Act, 1972. Reliance may be placed in the decision*

of Singh Enterprises v. Commissioner of Central Excise, Jamshedpur reported in (2008) 3 SCC 70 and the relevant portions of the above decision is quoted below:-

"The commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. *The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of Limitation Act, 1963 (in short 'the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him to the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. <u>The proviso to Sub-Section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. That language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act.</u> The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."*

7. Countering the said argument of the petitioner, the respondent has submitted that the petitioner intentionally applied for the certified copy, 87 days after having received a plain copy of the same and as such as the period of limitation starts running from the date of the order, the petitioner's appeal was preferred beyond the period of 120 days.

8. It is submitted that there was intentional delay in applying for the certified copy to cause prejudice to the respondent employee who has prayed for her benefit under a beneficial legislation.

9. It is contented that the period taken for supply of certified copy cannot be deducted from the period of 120 days considering that the limitation started on the day the order was passed.

10. The respondent prays for dismissal of the writ application.

11. The respondent has relied upon the following judgments in support of his contention:-

   i. ***J. L. Morrison India Ltd., Mumbai – vs- Dy. Commissioner of Labour, Mumbai and others, reported in 2007 (6) Mh.L.J.;***

ii. ***Singh Enterprises –vs- Commissioner of Central Excise, Jamshedpur and others, reported in (2008) 3 SCC 70.***

12. Section 7(7) of the Payment of Gratuity Act, lays down:-

"Section 7.
....
(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 subsection (4), or deposits with the appellate authority such amount.]"

13. Section 12(2) of the Limitation Act, lays down:-

"Section 12. Exclusion of time in legal proceedings.-
....
(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded."

14. In ***Khakhar Shivlal Vallabhaji vs Mistry Ramjibhai Dhanjibhai, (1963) 4 GLR 164,*** Gujarat High Court held:-

> *"2. Part III of the Indian Limitation Act deals with the subject of computation of period of limitation. If after the period of limitation is computed, it is found that the period of limitation prescribed expired on a day when the Court is closed, then the suit, appeal or application as the case may be, may be instituted, preferred or made on the day that the Court reopens. This provision is contained in Section 4 of the Limitation Act. Section 4 has nothing to do with the question of computation of period of limitation. The period of limitation is to be computed in the manner stated in Section 12 to 25 of the Limitation Act. The first thing to be done in deciding the question of limitation is to compute the period of limitation The next step is to see whether Section 4 applies after the period of limitation is computed. For computing the period of limitation in the instant case only Section 12 has to be applied. It is conceded by the Learned Counsel for the applicant that we have only to apply Section 12 and the other sections in Part III of the Limitation Act are not applicable. In this case an application for certified copies was made on 6-6-59 and the copies were delivered on 22-6-59. The period to be excluded is the period between 6-6-59 and 22-6-59. This period has to be excluded if it falls within the period of limitation. But the period of limitation expired on 3-6-59 and therefore the period between 6-6-59 and 22-6-59 which is outside the period of limitation cannot be excluded. The period of limitation would therefore expire on 3-6-59 and as 3-6-59 happens to be a vacation day appeal could have been filed on the day of the reopening of the Court after the vacation i.e. on 15-6-59. In this view the delay would be 9 days and not 2 days. In Sub-section (2) of Section 12 of the Limitation Act it is provided that the time requisite for obtaining a copy of the decree shall be*

> *excluded. In this case the time requisite is 17 days. So 17 days would have to be excluded from the period of limitation. But the use of the word 'excluded would mean that this time would have to be deducted only if it falls within the period of limitation. But the period of limitation expired on 3-6-59 and the time requisite for obtaining the certified copies which is outside the period of limitation cannot therefore be excluded. In this view the correct delay would be 9 days. Even assuming that the time requisite would have to be deducted even though it falls outside the period of limitation the period of limitation of 30 days would have to be increased by 17 days. The period of limitation would therefore be 47 days starting from 3-5-59. The period of limitation would therefore expire on 20-6-59. That day not being a holiday Section 4 does not help the applicant and the appeal should have been filed on 20-6-59. In this view the delay would be 4 days."*

15. In ***V. Nagarajan vs Sks Ispat and Power Limited, in Civil Appeal No. 3327 of 2020, decided on 22nd October, 2021,*** the Supreme Court held:-

> *"g) Section 12(2) of the Limitation Act, 196314 applies from the date on which the copy of the order is made available and not from the date when such order is passed. The explanation to Section 12(2) of the Limitation Act would not be attracted in cases where a free copy is mandated by the statute and online copies can be used for filing an appeal. The explanation to Section 12(2) of the Limitation Act would apply only where no appeal can be filed without an application for, and furnishing of a certified copy. In any event, Section 12(2) of the Limitation Act excludes the time taken from the date of order to it becoming available;*
> *……………………..*

(e) Section 12 of the Limitation Act is clear in prescribing that the limitation period can be ascertained only after an application for a certified copy of the judgement or order is filed within the limitation period, in order to not be declared as time barred. The time period of limitation can either be calculated from the date of the order, 31 December 2019 in this case, or from the date of filing an application for a certified copy of the said order. In the absence of compliance with either, any appeal will be deemed as barred by limitation;

…………………

11 An appeal is a creature of statute, hence there is a fundamental distinction between the right to file a suit and the right to file an appeal. In terms of Section 9 of the Code of Civil Procedure, 1908, there is an inherent right to bring a suit of a civil nature, unless the suit is barred by statute. On the other hand, an appeal is a creature of statute and must have the clear authority of law.19 The IBC envisages a comprehensive dispute resolution process in Chapter VI. The NCLT is the empowered 'Adjudicating Authority' under Section 60 of the IBC with the jurisdiction to entertain any proceeding in relation to insolvency resolution or liquidation proceedings under the IBC. An appeal lies against an order of the Adjudicating Authority to the Appellate Authority, the NCLAT, under Section 61(1) of the IBC. An order of the NCLAT is subject to an appeal on a question of law to the Supreme Court under Section 62.

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14. Despite the above factual position, we do not want to hold against the appellants, the fact that they waited from 25-10- 2019 (the date of the order [Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd., 2019 SCC OnLine NCLT 749] of NCLT) up to 21-11-2019, to make a copy application. But at least from 19-12-2019, the date on which a certified copy was admittedly received by the counsel for the appellants, the period of limitation cannot be stopped *from running. From 19- 12-2019, the date on which the counsel for the appellants received the copy of the order, the appellants had a period of 45 days to file an appeal. This period expired on 2-2-2020."*

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19 Section 12 of the Limitation Act provides guidance on reckoning the period of limitation and excludes the time taken by a party for obtaining a certified copy of the order it seeks to appeal. However, the explanation clarifies that the time taken by the court in preparing the order before an application for a copy is filed by the aggrieved party, is not excluded from the computation of limitation:

"12. Exclusion of time in legal proceedings.—(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.
(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.
(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment 3[* *] shall also be excluded.*
(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

PART C Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded." (emphasis supplied) The import of Section 12 of the Limitation Act *and its explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the "time requisite" for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If no application for a certified copy has been made, no exclusion can ensue. In fact, the explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made. It cannot be said that the right to receive a free copy under Section 420(3) of the Companies Act obviated the obligation on the appellant to seek a certified copy through an application. The appellant has urged that Rule 1424 of the NCLAT Rules empowers the NCLAT to exempt parties from compliance with the requirement of any of the rules in the interests of substantial justice, which has been typically exercised in favour of allowing a downloaded copy in lieu of a certified copy. While it may well be true that waivers on filing an appeal with a certified copy are "14. Power to exempt.– The Appellate Tribunal may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice."*

16. In the present case, the impugned order was passed on 12.02.2024 and copy of the order was received by the petitioner on 19.03.2024. The period of limitation under Section 7(7) of PAG Act expired 60 days thereafter, that is on

19.05.2024. Extension of further 60 days ended on 19.07.2024. The appeal was filed on 01.08.2024.

17. The petitioner applied for certified copy on 14.06.2024 after about 85 days but within the period of limitation (on extension) being 120 days (Section 7(7) of the PAG Act). He received the certified copy on 01.08.2024 and on the same day filed the appeal.

18. As such as the application for the certified copy was made within the period of limitation as specified under Section 7(7) of the PAG Act and sufficient cause has been shown, the period taken for supply of certified copy, that is from 14.06.2024 to 01.08.2024 (48 days) is to be deducted while computing the period of limitation. ***(V. Nagarajan vs Sks Ispat and Power Limited (Supra))***

19. As such the period of limitation to be computed in this case as per Section 12 of the Limitation Act will be as follows:-

Date of service of copy order- 19.03.2024 (date of knowledge in this case).

Date of application for certified copy- 14.06.2024.

Date of receipt of certified copy- 01.08.2024.

20. So in the present case the appeal was filed within 85 days. That is 19.03.2024 to 14.06.2024=85 days.

21. As such the appeal was within the period of limitation (on extension) as per Section 7(7) of the PAG Act as cause show is found to be sufficient in the interest of justice.

22. **Accordingly the order passed by appellate authority on 22.1.2025 being not in accordance with law is set aside.** The appellate authority is directed to hear the appeal on merit and dispose of the same on hearing the parties and considering the materials on record within 30 days from the date of communication of this order by passing a reasoned order.

23. **WPA 10658 of 2025 is allowed.**

24. All connected application, if any, stands disposed of.

25. Interim order, if any, stands vacated.

26. Urgent Photostat certified copy of this Order, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)