IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **06.08.2025**

CORAM

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

W.P.No.29078 of 2022
and WMP.Nos.28360,28363 & 28365 of 2022

M/s.K.A.Higher Secondary School,
represented by the Secretary,
K.T.J.Prakash .... Petitioner

Vs

The Assisant P.F.Commissioner,
EPF Organisation,
Sub Regional Office, NGO 'B' Colony,
Tirunelveli. .... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records and proceedings on the file of the learned Central Government Industrial Tribunal cum Labour Court, Chennai pertaining to EPF Appeal No.95 of 2018 resulting in the order dated 21.09.2022, quash the same and consequently condone the delay of 291 days in filing the said appeal.

For Petitioner : M/S.D.Geetha

For Respondent :M/S.R.Meenakshi

Senior Counsel

ORDER

This Writ Petition has been filed challenging the order passed by the Central Government Industrial Tribunal cum Labour Court, Chennai in EPF Appeal No.95 of 2018 dated 21.09.2022 and quash the same and consequently condone the delay of 291 days in filing the appeal.

2. The writ petitioner herein filed an appeal before the Central Government Industrial Tribunal cum Labour Court in EPF Appeal No.95 of 2018 and Employees Provident Fund Appellate Tribunal as against the order passed by the authority under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF and MP Act) under section 7A of the Act dated 21.08.2014 in ATA No.1063(13) / 2015. The said appeal was dismissed on the ground of limitation. Aggrieved by the said order, the present writ petition has been filed.

3. The learned counsel for the petitioner would submit that the petitioner school is a Government Aided School established and

managed by the Kayalpatnam Arumuganeri Kalvi Sangam, which is a registered society. As per the notification of Exemption S.O.2121 dated 04.07.2003 and the successive notifications of exemption granted by the Central Government under section 16(2) of the 1952 Act, through S.O.931 (E) dated 17.08.2004 and S.O.1431 dated 14.05.2010 upto 31.03.2015, establishments that were wholly financed by grants-in-aid received from the Government were exempted from the operation of the 1952 Act for the specified period of time. While so, in the year 2013 an Enforcement Officer from the respondent's office had inspected the petitioner school and served with a coverage memo dated 31.01.2013 issued under section 1(3)(b) of the EPF Act, 1952. A code No.TN/89431 was allotted and thereafter the respondent initiated proceedings under section 7A of the Act for assessment of EPF dues payable from June 2009 to July 2013. The petitioner school also submitted an explanation dated 26.11.2013, but without considering the same, the authorities have passed an order. Aggrieved by the said assessment order under section 7A, the petitioner's school filed an appeal under section 7-I of the Act before the EPF Appellate Tribunal with a delay of 291 days. Due to precarious financial position of the school, a petition to waive deposit amount due under section 7-O of the act was filed. After assigning the number, notice was ordered and both parties appeared before the Appellate Tribunal. Thereafter, the Appellate Tribunal dismissed the petition stating that under Rule 7(2), the Tribunal has to condone the period of limitation to 60 days, after the limitation period of 60 days and beyond the period of limitation (60days), the Tribunal has no power to condone the delay and thereby appeal is liable for dismissal for default as well as barred by limitation.

3.1. The aforesaid order passed by the Tribunal is against law and there is no specific express exclusion of Section 5 of Limitation Act to the Employees Provident Fund and Miscellaneous Provisions Act. Though the limitation is prescribed in the Act itself, when there is no specific exclusion of the applicability of the Limitation Act, Section 5 is applicable, but the Tribunal, without considering the same, has dismissed the petition that too without hearing the petitioner. Therefore, the order passed by the Tribunal is liable to be set aside.

3.2. The petitioner has relied upon the following judgments:

1.Sakuru Vs.Tanaji reported in 1985 AIR 1278.

2.Superintend Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper & Another Vs.Excise and Taxation Officer, Sunder Nagar/Assessing Authority made in Civil Appeal Nos.8276-8277 of 2019.

3.M/s.Alpha Shopping represented by its Proprietor P.Farook Vs.The Assistant Commissioner (CT) made in W.A.No.1231 of 2021.

4. A Francis Leo Gunaseelan Vs.The Special Joint Commissioner of Labour/Appellate Authority under TN shops & Establishment Act, Commissionerate of Labour, Teynampet, Chennai made in W.P.No.4336 of 2019 dated 26.04.2019.

4. The learned Senior counsel for the respondent would submit that the present writ petition has challenged the order passed by the Appellate authority, declining to entertain the appeal on the ground of limitation. Infact as per Rule 7, the appeal has to be preferred within 60 days from the date of order and thereafter, the Tribunal can condone the delay of 60 days and thereafter the Tribunal has no power to condone the delay. Therefore, the Appellate Tribunal correctly dismissed the petition since the appeal was preferred with a delay of 291 days in preferring the appeal. Once the Act itself prescribed particular period as limitation, thereafter the authority has no power to extend the limitation and section 5 of limitation Act is not applicable to the proceedings under the EPF

and MP Act. Therefore, the order passed by the authority on the ground of limitation is in accordance with law and the writ petition is liable to be dismissed.

4.1. To support her contention, the learned Senior Counsel for the respondent has relied on the following judgements:

1.M/s.A.P.C.Papers and Boards India Pvt. Ltd., represented by its Managing Director Vs.The presiding officer, employees pfovident fund appellate Tribunal, Bangaluru and others made in W.P.No.44414 of 2016 dated 02.01.2017.

2.M/s.Trip Go Trip Tourism Pvt. Ltd., Vs.The Presiding Officerr, Employees Provident Fund, Appellate Tribunal, Bangaluru made in W.A.No.338 of 2017 dated 23.07.2018.

3.The Managing Director, M/s.A & F Overseas Trade Limited Vs.The Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Sub Regional Office, Puducherry made in W.P.No.28363 of 2013 dated 06.11.2019.

4.Tamilnadu Khadi and Village Industries Board, represented by its Chief Executive Officer, Kuralagam, Chennai Vs.The Assistant Provident Fund Commissioner, Employees Provident Fund organization, made in W.P.No.3301 of 2015 dated 06.11.2019.

5.The Assistant PF Commissioner, Employees Provident Fund Organization Vs.The Presiding Officer, Employees Provident Fund Appellate Tribunal and others made in W.P.No.30732 of 2014 dated 22.11.2019.

6.Assistant Commissioner (CT) LTU, Kakinada and others Vs.Glaxo Smith Kline Consumer Health Care Limited reported in (2020)

19 SCC 681.

7.Hitech Industrial Lining Pvt. Ltd represented by its Director, D.Baskar Seshasayee Vs.The Assistant Provident Fund Commissioner (PDC), Employees Provident Fund Organization made in W.P.No.33127 of 2014 dated 15.07.2022.

8.Arun Mishra Vs.The Central Provident Fund Commissioner, Employees Provident Fund Organization made in W.P.No.20667 of 2015 dated 15.07.2022.

9.M/s.Sabari Textiles Pvt.Limited represented by its Executive Director, S.Sivakumar Vs.Assistant Provident Fund Commissioner, Employees Provident Fund Organization made in W.P.No.20629 of 2022 dated 12.08.2022.

10.M/s.Coastal Motor Transport Workers, Co-operative Society Ltd Vs.The Regional PF Commissioner, EPFO, Regional Office made in Appeal No.37 of 2022 dated 01.06.2022.

11.M/s.Sieta Technologies Private Limited Vs.The Union of India and others made in W.P.No.2969 of 2023 dated 03.02.2023.

12.M/s.Anjappar Chettinad Ac Restaurant represented by it sMaruthu Pandian Vs.The Regional Provident Fund Commissioner-II, Employees Provident Fund Organization made in W.P.No.21057 of 2023 dated 17.07.2023.

13.Dahod Nagar Seva Sadan, Dahod Vs.Regional Provident Fund Commissioner-II, Employees Provident Fund Organization made in EPF Appeal (CGITA) No.18 of 2023 dated 01.11.2023.

14. Siddhi Engineering Vs.REgional Provident Fund Commissioner-II, Sub Regional Office reported in 2024 SCC online Bom 44.

15.M/s.District Programme Co-ordinator Cum Chief Educational Officer Vs.The Assistant Provident Fund Commissioner Employees Provident Fund Organization Regional Office and others made in

W.P.No.3608 of 2025 dated 31.01.2025.

16.M/s.District Programme Co-ordinator Cum Chief Educational Officer, Vs. The Assistant Provident Fund Commissioner, Employees Provident Fund Organization Regional Office and others made in W.A.No.677 of 2025 dated 07.03.2025.

5. This Court heard both sides and perused the records.

6. In this case, the only point to be decided is whether the Tribunal can condone the delay beyond the period of 120 days. According to the petitioner though Rule 7 fixed the limitation period as 60 days for preferring an appeal and for another 60 days, the Appellate Authority can condone the delay, there is no specific exclusion of application of limitation act and thereby the Tribunal has power to condone the delay by invoking Section 5 of the limitation act. At this juncture, it is relevant to refer the Rule 7, Sub-clause-II of the EPF and MP rule, which reads as follows:

> *"Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal.*
>
> *Provided that the Tribunal may if it is satisfied that the appellant was prevented by the sufficient cause from preferring the appeal within the prescribed period, extend the said person by a further period of 60 days."*

Therefore, from the plain reading of the aforesaid Rule, it is clear that the time to prefer an appeal is 60 days, provided that the Tribunal may if it is satisfied that the appellant was prevented by the sufficient cause from preferring the appeal within the prescribed period, extend the said person by a further period of 60 days. Therefore, it is clear the Appellate Authority has power to condone the delay of 60 days after the lapse of 60 days appeal period. In the case on hand also, according to the petitioner, there is a delay of 291 days, but the authority mentioned as 301 days.

7. The learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court in CA.Nos.8276-8277 of 2019(*Superintend Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper & Another Vs.Excise and Taxation Officer, Sunder Nagar/Assessing Authority)*, wherein in para 22 it has been observed as under:

> *"22.The High Court has relied upon the decision of this Court in Patel Brothers(supra) in the context of the Assam VAT Act in which the above mentioned provision of section 84 made the difference, which makes specific provision that only sections 4 and 12 of the limitation act are applicable. Consequently, it*

follows that other provisions are not applicable. The decision in bongo India Private Limited (supra) also turned on the scheme of the Excise Act. The scheme of the Excise Act is materially different than that of the Himachal Pradesh VAT Act. Thus, the decision in Hango India Private Limited (Supra) also cannot be said to be applicable to interpret the Himachal Pradesh VAT Act. AS the revision under the Act of 2005 lies to the High Court, the provisions of Section 5 of the Limitation Act are applicable, and there is no express exclusion of the provisions of section 5 and as per section 29(2), unless a special law expressly excludes the provision section 4 to 24 of the limitation act are applicable. When we consider the schme of the Himachal Pradesh VAT Act,2005, it is apparent that its scheme is not ousting the provisions of the Limitation Act from its ken which makes principles of section 5 applicable even to an authority in the matter of filing an appeal but for the said provision the authority would not have the power to condone the delay. By implication also, it is apparent that the provisions of Section 5 of the limitation Act have not been ousted; they have the play for condoning the limitation under section 48 of the Act of 2005. Suo Motu provision of revisional power is also provided to the Commissioner within 5 years. Thus, the intendment is not to exclude the Limitation Act. We condone the delay in filing of revision."

The said case law is not arising out of the EPF and MP Act and the Hon'ble Supreme Court in that case, discussed about the *Himachal Pradesh VAT Act and* held that when there is no express exclusion of provisions of Section 5 and as per 29(2) unless a special law expressly excludes the provisions, Sections 4 to 24 of the limitation Act are applicable.

8. Further the Hon'ble Division Bench of this Court in ***M/s.Alfa Shopping represented by its Proprietor P. Farook Vs. The Assistant***

Commissioner (CT), Mayiladuthurai held that the limitation period not prescribed under Article 226 is inserted just because there was a limitation period prescribed under the Tamil Nadu Value Added Act. Therefore, set aside the order passed by the learned Single Judge. But in the case on hand, there is no question about the maintainability of the writ petition on the ground of limitation. The question is whether the writ Court can condone the delay in presenting the appeal before the Appellate Tribunal under the EPF and MP Act. Therefore, the said judgement is not applicable to be present facts of the case.

9. Per contra the learned Senior counsel for the respondent relied upon the judgements cited (supra). In the case of ***Assistant Commissioner (CT) LTU, Kakinada and others Vs.Glaxo Smith Kline Consumer Health Care Limited reported in (2020) 19 SCC 681***, wherein para 19 held as follows:

> *"19.We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Limited, which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) (p) Ltd Vs. Union of India and also of the Karnataka High Court in phoenix plasts co.Vs.CCE. The logic applied in these decisions proceeds on fallacious premise. For these decisions are premised on the logic that provision such as section 31 of the 2005 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the constitution. This approach is faulty. It is not a matter*

> *of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction by overstepping or crossing the limits of jurisdiction including the flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The high Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeeth of the principel underlying the dictum of a three bench of this Court in ONGC. In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under section 31 of the 2005 Act. That would render the legislative schme and intention behind the stated provision otiose."*

On a careful perusal of the said judgment, it is clear that the statute provides specific limitation to prefer appeal and the parties choose to approach High Court after expiry of the maximum limitation period, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three Judge Bench of the Hon'ble Supreme Court in ONGC Vs.Gujarat Energy Transmission Corporation. In other words, the fact that the High Court has wide powers does not mean that it would issue a writ, which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under section 31 of the Act. That would render the legislative scheme and intention behind the statutory provision otiose.

10. After relying the aforesaid judgement of ***Assistant Commissioner (CT) LTU, Kakinada and others Vs.Glaxo Smith Kline Consumer Health Care Limited reported in (2020) 19 SCC 681***, the Hon'ble Division Bench of this Court, upon the writ petition arising out of the limitation period, declined to allow the writ petition. Wherein this Court in the case in ***M/s.District Programme Co-ordinator Cum Chief Educational Officer, Vs. The Assistant Provident Fund Commissioner, Employees Provident Fund Organization Regional Office made in W.P.No.3608 of 2025 dated 31.01.2025***, held in Para No. 5 as follows:

> *"7.Though it may be true that in one matter the writ petition is entertained by the Madurai Bench of this Court, that will not be a binding precedent for this Court since no final orders have been passed in the writ petition. Even in the interim relief, the question as to the maintainability of the writ petition is not decided. As far as this case is concerned, the order determining the liability was passed on 28.06.2024. AS per the Employees Provident Fund Appellate Tribunal Rules, the appeal has to be filed within a period of 60 days. The outer condonable limit is also prescribed as another 60 days. By the judgment of the*

Honourable Supreme Court of India in CCTV Vs.Glaxo Smith Kline Consumer Health Care Ltd., the position is very clear that this Court under Article 226 cannot extend the period of limitation when the outer limit is mentioned and the same is mandatory. It is also further held that this Court cannot entertain a writ petition under Article 226 when the orders are subject to statutory regime of appeal and the authorities omit to exercise that right available to them."

11. Further, the Hon'ble Division Bench of this Court in the appeal as against the said W.P. No.3608 of 2025 by applying the judgement of Supreme Court in ***CCT Vs.Glaxo Smith Kline Consumer Health Care Limited.***, dismissed the writ appeal that either the period of limitation cannot be extended in the exercise of Judicial review under Article 226 of the Constition of India, or the time limit prescribed can be relaxed by the High Court. Further the Hon'ble Division Bench of this Court in ***M/s.Trip Go Trip Tourism Pvt. Ltd., Vs. The Presiding Officerr, Employees Provident Fund, Appellate Tribunal, Bangaluru made in W.A.No.338 of 2017 dated 23.07.2018,*** held in Para 2 and 3 as follows:-

"2. The learned single Judge dismissed the Writ petition on the ground that the Employees Provident Fund Act provides for condonation of delay of 60 days only and any delay beyond the statutory period fixed under the Act cannot be condoned, in the sense, Section 5 of the Limitation Act would not apply as a specific period is fixed by the enactment itself.

3. This position of law has been reiterated by the Honourable Supreme Court in the case of Union of India vs. Popular

Construction Co., ((2001) 8 SCC 470)".

12. Further the Hon'ble Division Bench of the High Court of Bombay in ***Siddhi Engineering vs. EPFO (SCC) reported in 2024 SCC Online Bom 44,*** after relying the judgment of Hon'ble Supreme Court in ***ONGC vs. Gujrat Energy Transmission Corporation reported in 2017 5 SCC 42,*** held that "since the petitioner has approached the Court beyond the period of 120 days effectively with a delay of 24 months there beyond, we would not be justified in entertaining this Writ petition in the light of the law laid down by the Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada".***

13. From the above judgments as discussed supra, it is clear that when the Act itself prescribed limitation by fixing outer limit, beyond that period, the delay cannot be condoned by the Courts. As per Section 7(1) of the EPF and MP Act, the appeal can be filed within 60 days and Proviso to Rule 7(2) of the EPF Appellate Tribunal Rules stipulates further time of 60 days, beyond that period, the Court cannot entertain the appeal. In the case on hand also, the appeal was preferred after the limitation period, thereby, Appellate Authority under EPF and MP Act, correctly dismissed the appeal on the ground of limitation and the same

warrants no interference.

14. Therefore, in view of the said discussions and aforesaid judgements, this Court is declined to grant relief to the petitioner. The writ petition has no merits and deserves to be dismissed. Accordingly, this Writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

06.08.2025

Index : Yes/No
Neutral citation : Yes/No
mpa

To

1.The Central Government Industrial Tribunal cum Labour Court,
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2.The Assisant P.F.Commissioner,
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P.DHANABAL,J.

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