

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-22704-2018 (O&M)

Date of Decision : January 21, 2026

M/S SARWAN SINGH DHIMAN & SONS

-PETITIONER

V/S

**REGIONAL PROVIDENT FUND COMMISSIONER AND
ANOTHER**

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Gunjan Rishi, Advocate
for the petitioner.

Mr. Rajesh Hooda, Advocate
for the respondent No.1.

KULDEEP TIWARI, J. (ORAL)

1. The relief yearned for in the instant writ petition appertains to quashing of the order dated 25.07.2018, whereby the application filed by the petitioner for condonation of delay in filing the appeal was dismissed by the competent authority on the ground that it lacks jurisdiction to condone delay beyond 120 days.

2. Admittedly, there was delay of 337 days in filing the appeal.

3. Learned counsel for the petitioner, relying upon Section 7A(4) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "EPF Act"), contends that where an *ex parte* order has been passed, the limitation period begins from the date of communication of the order, and the officer/authority may be approached within three months thereafter for setting aside such *ex parte* order. It is submitted that, in the present case, although the petitioner participated in the

proceedings before the authority concerned, the order was never communicated to him.

4. Having heard learned counsel for the petitioner, this Court finds the contention to be misconceived. The reason for drawing this inference is that Section 7A(4) of the EPF Act is not applicable in the present case as the petitioner actively contested the matter before the authority concerned and subsequently filed an appeal before the statutory appellate authority. The issue, which emerges for consideration, is “*whether the appellate authority is vested with jurisdiction to condone delay in filing the appeal beyond 120 days*”. On this issue, a reference to Rule 7(2) of The Tribunal (Procedure) Rules, 1997 (hereinafter referred to as the “Rules of 1997”), which is extracted hereunder, is inevitable:-

“7. Fee, time for filing appeal, deposit of amount due on filing appeal.

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(2) 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 sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.

Provided further that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75% of the amount due from him as determined under Section 7-A.

Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.”

5. Further, the issue (*supra*) is no more *res integra* inasmuch as a

Co-ordinate Bench of this Court, relying upon the decision in “**Bank of Baroda Vs. Union of India and others**”, CWP-1121-2025, held in “**M/s Punjab State Civil Supplies Corporation Ltd. Vs. Assistant Provident Fund Commissioner and others**”, CWP-6719-2025, that the appellate authority has no power to condone delay beyond 120 days. The relevant paragraphs of the verdict rendered in CWP-6719-2025 are extracted hereunder:-

“4. The same question of law came up for consideration before this Court while deciding CWP-1121-2025 titled as Bank of Baroda vs. Union of India and others on 17.02.2025 wherein, it has been held that the Appellate Authority does not have the power to condone the delay beyond 120 days.

5. Learned counsel for the petitioner-Corporation has not been able to rebut the said principle of law.

6. Keeping in view the said fact, present petition is also dismissed in terms of CWP-1121-2025 titled as Bank of Baroda vs. Union of India and others, decided on 17.02.2025 keeping in view the findings recorded by this Court.”

6. The verdict (*supra*) was challenged before a LPA Bench of this Court in LPA-3242-2025, however, the same was upheld vide order dated 13.11.2025.

7. A similar issue has been examined by the Hon’ble Supreme Court in “**Assistant Commissioner (CT) LTU, Kakinada and others Vs. M/s. Glaxo Smith Kline Consumer Health Care Limited**”, 2020 AIR (SC) 2819. The relevant observations of the Supreme Court read as under:-

“8. From the indisputable facts, it is evident that the assessment order dated 21.6.2017 was challenged by the respondent by way of statutory appeal before the Appellate Deputy Commissioner only on 24.9.2018. Section 31 of the 2005 Act provides for the statutory remedy against an assessment order. The same, as applicable at the relevant time, reads thus:

“31. (1) Any VAT dealer or TOT dealer or any other dealer objecting to any order passed or proceeding recorded by any authority under the provisions of the Act other than an order passed or proceeding recorded by an Additional Commissioner or Joint Commissioner or Deputy Commissioner, may within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed:

Provided that the appellate authority may within a further period of thirty days admit the appeal preferred after a period of thirty days if he is satisfied that the VAT dealer or TOT dealer or any other dealer had sufficient cause for not preferring the appeal within that period:

Provided further that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces the proof of payment of tax, penalty, interest or any other amount admitted to be due, or of such instalments as have been granted, and the proof of payment of twelve and half percent of the difference of the tax, penalty, interest or any other amount, assessed by the authority prescribed and the tax, penalty, interest or any other amount admitted by the appellant, for the relevant tax period, in respect of which the appeal is preferred.

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Going by the text of this provision, it is evident that the statutory appeal is required to be filed within 30 days from the date on which the order or proceeding was served on the assessee. If the appeal is filed after expiry of prescribed period, the appellate authority is empowered to condone the delay in filing the appeal, only if it is filed within a further period of not exceeding 30 days and sufficient cause for not preferring the appeal within prescribed time is made out. The appellate authority is not empowered to condone delay beyond the aggregate period of 60 days from the date of order or service of proceeding on the assessee, as the case may be. In the present case, admittedly, the appeal was filed way beyond the total 60 days' period specified in terms of Section 31 of the 2005 Act.....

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11. In the backdrop of these facts, the central question is: whether the High Court ought to have entertained the writ petition filed by the

respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the same is no more res integra. Even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, AIR 1969 Supreme Court 556 and also Nivedita Sharma vs. Cellular Operators Association of India & Ors., (2011) 14 SCC 337). In Thansingh Nathmal & Ors. vs. Superintendent of Taxes, Dhubri & Ors., AIR 1964 Supreme Court 1419, the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self-imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person. In paragraph 7, the Court observed thus:-

“7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the Taxing Authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles.

But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by

statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.” (emphasis supplied)

We may usefully refer to the exposition of this Court in Titaghur Paper Mills Co. Ltd. & Anr. Vs. State of Orissa & Ors., (1983) 2 SCC 433, wherein it is observed that where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute must only be availed of. In paragraph 11, the Court observed thus: -

“11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that

where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford [(1859) 6 CBNS 336, 356] in the following passage:

There are three classes of cases in which a liability may be established founded upon statute.... But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd. (1919 AC 368) and has been reaffirmed by the Privy Council in Attorney-General of Trinidad and Tobago v. Gordon Grant & Co. Ltd. (1935 AC 532) and Secretary of State v. Mask & Co. (AIR 1940 PC 105). It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.” (emphasis supplied)

In the subsequent decision in Mafatlal Industries Ltd. & Ors. vs. Union of India & Ors., (1997) 5 SCC 536, this Court went on to observe that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The Court, however, added a word of caution and expounded that the constitutional Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.

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14. The Petitioner faced with this unfortunate situation, filed an appeal

under Section 31 of the VAT Act on 24.9.2018 on the bona fide belief that there are good grounds for condonation of the delay since the Petitioner cannot suffer for the errors committed by one of its employees.

15. It is submitted that the 2nd Respondent, vide order, dated 25.10.2018 (Ex. P-7), rejected the appeal on the ground that he has no power to condone the delay beyond 30 days. It is also observed in the said order that appeal against the Endorsement was also dismissed by him on 17.8.2018. However, copy of the order is not yet served on the petitioner. The 2nd Respondent observed that the Petitioner cannot dispute the service of assessment order on 22.6.2017 and failure to file the appeal within 60 days would mean that the assessment order has attained finality.”

8. In view of the judicial pronouncements (*supra*), and in light of the mandate enclosed in Rule 7(2) of the Rules of 1997, this Court finds no merit in the instant writ petition, which is accordingly **dismissed**.

9. Pending application stands disposed of accordingly.

January 21, 2026
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No