

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Decided on February 24, 2014*

+ **W.P.(C) 1237/2014**

M/S-GOOD WRENCH SERVICES ..... Petitioner

Through: Mr.M.K.Verma, Advocate

versus

ASSISTANT PROVIDENT FUND COMMISSIONER E.P.F.  
ORGANIZATION ..... Respondent

Through: None

**CORAM:**

**HON'BLE MR. JUSTICE V.KAMESWAR RAO**

**V.KAMESWAR RAO, J. (Oral)**

**CM No. 2578/2014**

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

**W.P. (C) 1237/2014**

1. The challenge in this writ petition is to the order dated January 08, 2014 whereby the Employees Provident Fund Appellate Tribunal dismissed the appeal filed by the petitioner on the ground of limitation as the same was filed with a delay of 576 days.

2. The appeal was filed by the petitioner challenging the orders dated September 12, 2008 under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (Act, in short) and February 28, 2012 under Section 7B of the Act.

3. The appeal was filed by the petitioner on December 10, 2013, which is almost after a period of one and half year from the date of order under Section 7B of the Act.

4. I note that the Tribunal has noted the Judgment of this Court in *Shree Shyamkamal Industries Private Limited Vs. Union of India, Civil Writ Petition No. 16324 of 2004* decided on July 27, 2005. It also relied upon the Judgment of the Division Bench of this Court in *Delta Impex Vs. Commissioner of Customs (Cus. AC No. 9/2003)*, decided on February 13, 2004.

5. While relying upon the Judgment of the Division Bench of this Court in the case of *Shree Shyamkamal Industries Private Limited (supra)*, the Tribunal concluded as under:

*“5. The extent and scope of ‘law of limitation applicable to judicial proceedings entertained by this Tribunal are considered by the Hon’ble High Court of Delhi in the case of Shree Shyamkamal Industries Pvt. Ltd. Vs. UOI (CWP No. 16324 of 2004 decided on 27-07-2005). The Hon’ble High Court of Delhi held as follows:-*

*“18. The Legislature left it open to the rule making authority to prescribe time for preferring an appeal. However, at the same time the rule making authority while prescribing the period of limitation for preferring an appeal also provided a period during which if there is a delay, the same can be condoned if the Tribunal is satisfied that the appellant*

*was prevented by sufficient cause from preferring the appeal within the prescribed period. However, the limitation was placed that can be done if there is a delay of a further period of 60 days.*

*19. In our opinion, it cannot be said that the rule making authority has authority though it fit to provide some period if there is a sufficient cause and the Tribunal is satisfied that the appellant was prevented from preferring the appeal on such cause to extend the period of limitation. This provision is an enabling provision. It does not take away the right of a person of preferring an appeal but on the contrary it enables a party who could not prefer an appeal within the prescribed period for sufficient reasons. However, at the same time, keeping in mind that the provision is made for a weaker section, disputes must be resolved at the earliest, therefore, restricted the period i.e. that if the delay is of 60 days then to that extent delay can be condoned. Therefore, in our opinion, the provision cannot be said to be ultra virus of the provisions of the Act as the provision for condonation of delay is made to help the litigant who might be facing genuine difficulties. It is difficult to say that the proviso to sub-rule (2) of Rule 7 is bad. If that is declared as bad or ultra virus Section 7-I or Section 21 (1)(b) of the Act, it can be said that the period of limitation prescribed is bad for want of not providing extended*

*period in case of difficulty”.*

6. This issue has come up earlier before this Court as well in *University of Delhi Vs. Vijay Prakash Vijay & Ors., Writ Petition (Civil) 350/2014* decided on January 20, 2014, wherein this Court, relying upon the Judgments as rendered by this Court as well as by the Madras High Court and the High Court of Gujarat, has observed as under:

*“5. I have considered the submissions of the learned counsel for the petitioner. The issue is no more res integra. A Single Judge of this court in the case Prudential Spinners Ltd. Vs. Employees P.F.Appellate Tribunal, 142 (2007) Delhi Law Times 361, while dealing with a similar provision under Employees Provident Fund and Miscellaneous Provisions Act, 1952 wherein an appeal is required to be filed in the similar manner as has been provided in Section 7(7) of the Act, has held as under:*

*“12. Having gone through the records and given my thoughtful consideration to the submissions made by the learned Counsel for the parties, this Court cannot but arrive at the conclusion that there is no error, infirmity or perversity in the impugned order dated 13th November, 2006 passed by the tribunal. The tribunal has rightly adopted and applied the law as laid down by a Division Bench of this Court in the case of Assistant Provident Fund Commissioner, Meerut (supra), which holds the field as on date. In view of a specific provision contained in Rule 7(2) of the Rules, the tribunal could not have condoned the delay beyond a maximum period of 120 days as sought to be contended by the petitioner. There is no force in the plea of the petitioner that the aforesaid*

*judgment rendered by the Division Bench is in "jeopardy" and has lost its binding force as a precedent merely because leave to appeal has been granted by the Supreme Court in a Special Leave Petition pending before it, as admittedly, there is no stay operating against the order impugned in the aforesaid Special Leave Petition. In this view of the matter, this Court is bound to follow the judgment rendered by a Division Bench of this Court referred to hereinabove, and also followed by two single Judges in the cases of Manu Tea Valley Company and Megacity Cement Pvt. Ltd, referred to hereinabove. Reliance placed by the learned Counsel for the petitioner on the judgments of the Supreme Court in the cases of N. Balakrishnan (supra) and Smt. Rani Kusum (supra) is also misconceived for the reason that the general observations with regard to extension/enlargement of time in condoning the delay, cannot be imported into statutes which not only prescribe a specific period of limitation but also further goes on to prescribe a period for condoning the delay, if any, in preferring the appeal. It may also be noted that in the case of N.Balakrishnan (supra), the observations of the court were in the context of condensation of delay under Section 5 of the Limitation Act which provision has been held by the Division Bench in the case of Assistant Provident Fund Commissioner, Meerut (supra) to be expressly excluded in considering an application made under the provisions of the Act and Rules, in view of existence of a specific provision of Rule 7(2) made in the Rules, for limitation.*

*13. In view of the fact that limitation is prescribed by a specific Rule, and condensation has also to be considered within the purview of that Rule alone and the provisions of the*

*Limitation Act cannot be imported into Act and Rules, the inevitable conclusion is that the tribunal did not have the powers to condone the delay beyond a maximum period of 120 days as stipulated in Rule 7(2) of the Rules.*

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15. *This Court shall, however, refrain from examining the relative merits/ demerits of the sufficiency of cause offered by the petitioner for seeking condonation of delay, as discussed in the impugned order, and sought to be supported by the learned Counsel for the respondent, for the reason that once it has been held that the appeals were ex facie barred by limitation and could not have been entertained by the tribunal and were rightly rejected on the ground of limitation, there arises no occasion to delve further in the matter by examining the explanation furnished by the petitioner juxtaposed against the arguments offered by the RPFC to puncture holes in the said explanation. It is suffice to hold that no power vested with the tribunal to condone the delay in filing the appeals preferred by the petitioner, after expiry of a total of 120 days from the date of the order passed by the Assistant Provident Fund, Commissioner, Hyderabad, Andhra Pradesh”.*

6. *It is noted that the same very provision i.e. Section 7(7) of the Act under similar circumstances came up for consideration before the Madras High Court in W.P. No. 14533 of 2001 decided on June 08, 2010 titled ‘The Commissioner, Udumalaipet Municipality Vs. Rajammal and Ors.’, wherein the Appellate Authority under the Act rejected the application for condonation of delay filed by the Municipality by holding that the appellate authority*

*had no power to condone the delay of 60 days. I also note that a similar issue had come up for consideration before the High Court of Gujarat at Ahmedabad in the case of 'Surendranagar Dudhrej Nagar Palika Vs. Motiben Danabhai', Special Civil Application Nos. 9335, 9344, 8577, 8578 and 8579 of 2002 decided on May 01, 2003, wherein the Nagar Palika could not file the appeal before the Appellate Authority on the ground that period of limitation of 120 days had expired. The Nagar Palika invoked the jurisdiction of the High Court challenging the order of the Controlling Authority. The High Court in Para 13 considered the issue, whether an application under Section 5 of the Limitation Act, 1963 to condone the delay of more than 120 days in preferring the appeal, is applicable. The High Court was of the following view:*

*“13. As per Section 7 of the Gratuity Act, 1972 any person aggrieved by an order under 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. 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 60 days, extend the said period of further period of 60 days. The further provision is that appeal is required to be filed after depositing the amount as determined by the Controlling Authority under Section 4(4) of the Gratuity Act, 1972. The law on this point is very clear to the effect that once the Limitation is prescribed under the statutory provision, then appellate authority is not entitled to invoke Section 5 of the Limitation Act, 1963 to condone the delay of more than 120 days in*

*preferring the appeal that view has been taken by the Calcutta High Court Division Bench in case of City College, Calcutta V/s. State of West Bengal reported in 1987 (1) LLJ 41 and recently also, Bombay High Court has also taken the same view in case of Shri Gurudeo Ayurved Mahavidyalaya, Gurukunj Ashram and another V/s. Madhav and others reported in 1994 LAB. I.C. 1542 and it is decided that under Section 7(7), Proviso - Appeal - Limitation - Appeal filed beyond prescribed period of 120 days - Delay cannot be condoned - Section 5 of Limitation Act, not applicable. Therefore, once limitation is prescribed by the statutory provision and appeal is not filed within that time limit, then petitioner is not entitled to challenge the said order before this Court. When alternative effective statutory remedy of appeal is available and petitioner fails to avail the said remedy, then direct petition under Article 226/227 of the Constitution of India cannot be entertained and maintainable”.*

7. In view of the position above, I do not find any merit in the writ petition. The same is dismissed.

8. No costs.

CM No. 2577/2014

In view of the dismissal of the writ petition, this application is also dismissed as infructuous.

**(V.KAMESWAR RAO)  
JUDGE**

**FEBRUARY 24, 2014**

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