**(2012) 09 AHC CK 0117**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 45385 of 2012

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| Mantri, Khadi Gram Udyog Samiti, Harijan Gurukul, Distt.Azamgarh | APPELLANT |
| Vs | |
| Prescribed Authority, Azamgarh and Others | RESPONDENT |

**Date of Decision :** 25-09-2012

**Acts Referred:**
Limitation Act, 1963 — Section 5
Payment of Wages Act, 1936 — Section 17

**Citation :** (2012) 09 AHC CK 0117

**Hon'ble Judges :** Dilip Gupta, J

**Final Decision :** Dismissed

## Judgement

Dilip Gupta, J.—This petition seeks the quashing of the order dated 14th August, 2012 passed by the Appellate Authority under the Payment of Wages Act, 1936 (hereinafter referred to as the ''Act'') by which the application filed by the petitioner for condoning the delay in filing the Appeal has been rejected.

2. It transpires from the records of the writ petition that respondent no.3Sugriva filed an application under Section 15(2) of the Act before the Workmen Compensation Commissioner/Prescribed Authority with the allegation that he was entitled to earned wages from the petitioner from 1st April, 2005 to 31st August, 2008. This application was registered by the Prescribed Authority as P.W. Case No.1 of 2008. An order dated 28th May, 2008 was passed by the Prescribed Authority for closing the evidence of the petitioner since despite opportunities granted to the petitioner evidence was not led and 30th May, 2008 was fixed for arguments. The Prescribed Authority then, by the order dated 30th May, 2008, directed the petitioner to pay Rs.41,228/ to respondent no.3Sugriva towards wages and Rs.82,456/ towards compensation.

3. This order dated 28th May, 2008 passed by the Prescribed Authority was assailed by the petitioner in Writ Petition No.31880 of 2008. Initially, an interim order was passed by the Court on 8th July, 2008 but after exchange of affidavits

 

the writ petition was dismissed by the judgment and order dated 18th October, 2011 on the ground that the petitioner had a statutory alternative remedy of filing an Appeal under Section 17 of the Act.

4. The petitioner subsequently filed an Appeal under Section 17 of the Act before the Appellate Authority on 10th November, 2011 and with the Appeal, the petitioner filed an application under Section 5 of the Limitation Act for condoning the delay in filing the Appeal. An application was also filed for grant of stay of the order passed by the Prescribed Authority.

5. The petitioner then filed Writ Petition No.1081 of 2012 for a direction upon the Appellate Authority to decide the Appeal filed by the petitioner. This petition was disposed of on 20th June, 2012 with a direction to the Appellate Authority to dispose of the delay condonation application and the stay application on the next fixed i.e. 21st July, 2012.

6. When the Appeal came up for consideration before the Appellate Authority, an objection was raised by the respondent in the Appeal that the provisions of Section 5 of the Limitation Act were not available to the appellant in the Appeal filed under Section 17 of the Act. It was also asserted by the respondent that even otherwise, the Appeal was not maintainable as the memorandum of Appeal was not accompanied by a certificate by the authority to the effect that the appellant had deposited the amount payable under the direction appealed against. These two objections were upheld by the Appellate Authority and, accordingly, the application filed under Section 5 of the Limitation Act and the stay application were rejected by the order dated 14th August, 2012. It is this order dated 14th August, 2012 that has been assailed in the present petition.

7. Learned counsel for the petitioner has submitted that in the facts and circumstances of the case the Appellate Authority should have condoned the delay in filing the Appeal and it is only after the delay was condoned that the petitioner would have satisfied the condition of deposit of the amount. He, therefore, submits that the order should be set aside.

8. Sri J.P. Singh, learned counsel appearing for respondent no.3Sugriva, however, submitted that the provisions of Section 5 of the Limitation Act would not apply when the Appeal is filed under Section 17 of the Act and in support of this contention he has placed reliance upon the decision of this Court in Hind Majdoor Sabha Vs. State of U.P. & Ors. 1999 (81) FLR 216. It is also his submission that even otherwise, as the memorandum of Appeal was not accompanied by a certificate by the authority to the effect that the appellant had deposited the amount payable under the direction appealed against, the Appellate Authority was justified in passing the order dated 14th August, 2012.

9. I have considered the submissions advanced by the learned counsel for the parties.

10. In order to appreciate the contentions advanced by learned counsel for the

 

parties, it will be appropriate to reproduce the provisions of Section 17 of the Act which are as follows:

"(1) An appeal against an order dismissing either wholly or in part an application made under subsection (2) of section 15, or against a direction made under subsection (3) or subsection (4) of that section may be preferred within thirty days of the date on which the order or direction was made in a Presidencytown before the Court of Small Causes and elsewhere before the District Court

(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees, or

(b) by an employed person or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the authority to make an application under subsection (2) of section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under subsection (4) of section 15.

(1A) No appeal under clause (a) of subsection (1) shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

(2) Save as provided in subsection (1), any order dismissing either wholly or in part an application made under subsection (2) of section 15, or a direction made under subsection (3) or subsection (4) of that section shall be final.

(3) Where an employer prefers an appeal under this section, the authority against whose decision the appeal has been preferred may, and if so directed by the Court referred to in subsection (1) shall, pending the decision of the appeal, withhold payment of any sum in deposit with it.

(4) The Court referred to in subsection (1) may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision."

11. The first contention that needs to be examined is whether the provisions of Section 5 of the Limitation Act would apply to the Appeal filed under Section 17 of the Act.

12. This issue was examined by this Court in Hind Majdoor Sabha (supra) and it was observed :

"9. In view of the aforesaid law as decided in the case of Hukum Narain Yadav v.

 

Lalit Narayan Misra, AIR 1974 SC 480 and followed in the case of Shri Anwari Basavaraj Patil vs. Sri Siddaramaiah, JT 1993 (1) SC 328 only thing to be considered is as to whether in the present case the provisions of Payment of Wages Act on examination make it clear that the provisions of the Limitation Act are necessarily excluded so far as appeal under provision of the said Act is concerned.

10. A comparison of the language used in Section 15 and Section 17 of the said Act clearly indicates that for the purpose of proceeding under Section 15 the power has been provided categorically for entertaining an application even after the period prescribed for filing such application. But, in the case of an appeal under Section 17 of the said Act such provision for condonation of delay has been omitted. Such specific omission on the part of the Legislature has to be interpreted as withholding the power of condonation of delay from the appellate authority. The provision of subsection (2) of Section 17 also indicates finality of the order passed under Section 15(2) same as provided in Section 17(1) i.e., an appeal filed within thirty days.

11. The contention of the respondents that specific provision for condonation of delay has been provided as the authority under Section 15 of the said Act is persona designata and the same was not required in case of appellate authority being a Civil Court, does not appear to be acceptable. In the present case, in the absence of any indication that for deciding the appeal under Section 17 of the said Act powers of Civil Court are available, the said contention of the respondentemployers cannot be accepted.

12. Moreover, in cases of U.P. State Electricity Board & Ors. Vs. 7th Additional District Judge, Faizabad & Ors., 1997 (76) FLR 354 and Union of India Vs. Aftab Hussain, 1966 ALJ 806 position in respect of appeal under Section 17 of the said Act had been considered holding finally that the Tribunal being not a Court within the meaning of Sections 4 and 5 of the Limitation Act, such power of condonation of delay under Section 5 of the Limitation Act is not available."

13. Learned counsel for the petitioner has not placed any decision which may have taken a contrary view. In view of the aforesaid decision of this Court in Hind Majdoor Sabha (supra), it has to be held that the provisions of Section 5 of the Limitation Act will not apply to an Appeal filed under Section 17 of the Act. The Appellate Authority, therefore, committed no illegality in rejecting the application filed under Section 5 of the Limitation Act and, accordingly the Appeal was dismissed as being barred by time.

14. It also needs to be pointed out that under Section 17(1A) of the Act, it is provided that no Appeal under subsection (1)(a) shall lie unless the memorandum of Appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction Appealed against. The Appeal that was filed by the petitioner was not accompanied by such a certificate.

15. Learned counsel for the respondent has placed reliance upon the decision of the Supreme Court in Commissioner of Income Tax, Bombay City I, Bombay Vs. M/s. Filmistan Ltd., AIR 1961 SC 1134 wherein a similar provision contained in Section 30 of the Income Tax Act came up for interpretation and has contended that in view of the aforesaid, the Appellate Authority committed an illegality in passing the impugned.

16. The observation of the Supreme Court in Commissioner of Income Tax (supra) are :

"2. The High Court answered the question in the affirmative. The Commissioner of Incometax has come in appeal against this judgment.

(2). Appeals are provided against assessments under section 30 of the Act. There is a proviso to section 30(1) in regard to the payment of taxes in the following words :

"Provided that no appeal shall lie against an order under subsection (1) of section 46 unless the tax has been paid."

17. The controversy between the parties revolves round the words "no appeal shall lie". The contention which was raised before us was that these words mean that there is no right of appeal till the tax paid and, therefore, if the tax has not been paid the memorandum of appeal cannot be filed and if filed it is merely a waste paper. In our opinion the meaning of the words "no appeal shall lie" in the proviso is not that no memorandum of appeal can be presented. All that it means is that the appeal will not be held to be properly filed until the tax has been paid. If, for instance, the memorandum of appeal is filed on the 20th day, i.e., 10 days before the period of limitation expires and the tax is paid within the rest of the 10 days, the appeal will be a proper appeal; it will be within time and no question of limitation will arise but if the tax is paid after the period of limitation has expired it will be taken to have been filed on the day when the tax is paid even though the memorandum of appeal was presented earlier and within the period of limitation. The question, will then have to be decided whether there was sufficient cause for condonation of delay and that is exactly what the Tribunal had ordered and that in our opinion is the effect of the proviso to s. 30(1) read with subs. (2) of s. 30 of the Act. It is unnecessary therefore to refer to the two cases referred to by the High Court, i.e., Raja of Venkatagiri v. Commissioner of Incometax 195528 ITR 189 : (AIR 1957 Andh Pra 276) and Kamdar Bros. of Jharia v. Commissioner of Incometax 195527 ITR 176; (S) AIR 1955 Pat 122)."

18. In the present case, admittedly the amount required to be deposited under Section 17(1A) of the Act was not deposited within the time prescribed for filing the Appeal and, as noticed above, Section 5 of the Limitation Act does not apply to an Appeal filed under Section 17 of the Act. It is for this reason that the application filed under Section 5 of the Limitation Act was rejected. Such being the position, the Appeal was also liable to be dismissed for this reason in view of

 

the decision of the Supreme Court in Commissioner of Income Tax (supra).

19. There is, therefore, no merit in this petition. It is, accordingly, dismissed.

 