

(2016) 09 JH CK 0010

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5343 of 2014.

**M/s Drug Research Laboratory - Petitioner @HASH State of Jharkhand
represented through the Director, Employees State Insurance
Corporation**

Date of Decision : 05-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Employees State Insurance Act, 1948 — Section 45

Citation : (2016) 151 FLR 918 : (2017) 2 JCR 515 : (2017) LabLR 445

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : M/s Rahul Kumar, Rajiv Ranjan Tiwari and G.B. Rao, Advocates, for the Petitioner; Mrs. Chaitali C. Sinha, J.C. to A.A.G, for the Respondent; Mr. Ashutosh Anand, Advocate, for the Respondent-ESI

Final Decision : Allowed

Judgement

Mr. Aparesh Kumar Singh, J. - Heard counsel for the parties.

2. The appeal preferred under Section 45AA of Employees State Insurance Act, 1948 on 28.03.2011 against the order passed under Section 45A determining the contribution of the petitioner Organization dated 04.01.2011, has been rejected on the grounds of limitation as being beyond 60 days of the date of the order by the impugned communication at Annexure-6 dated 05.06.2014 issued by the Assistant Director (Ins.I) (Respondent No. 3). Petitioner had also deposited the statutory 25% pre - deposit amount totaling Rs. 28,450/- of the demand on 28.03.2011 along with his Appeal Memo.

3. Categorical assertion made at Para-10 & 11 of the writ petition to the effect that the order impugned at Annexure-2 dated 04.01.2011 before the Appellate Authority was dispatched on 28.01.2011 vide letter dated 3465, does not stand categorically refuted by the Respondents in their counter affidavit dealing the said contention at Para-26 & 27 thereof. Counsel for the Respondent however has taken the plea that the provisions of Section 45AA of the Act of 1948

prescribe a period of 60 days from the date of the order impugned. In that case, the appeal being preferred on 28.03.2011 under Section 45A of the Act was beyond 60 days from the date of passing of the order dated 04.01.2011. It is submitted that the petitioner had submitted two letters dated 28.02.2011 and 03.03.2011 also (Annexure-A series) before the Assistant Regional Director, Regional Office and Deputy Director, Regional Office which shows that the petitioner was in conscious knowledge of the order impugned.

4. Annexure-A letter dated 28.10.2010 received on 28.02.2011, is obviously of a date prior to the passing of the original order on 04.01.2011. Letter dated 03.03.2011 received on 04.03.2011 would be well within 60 days period of receipt of the order by the petitioner of its issuance on 28.01.2011. Either of these two letters would not curtail the right of the petitioner to file a proper appeal within 60 days of the receipt of the copy of the order impugned before the Appellate Authority. It having been dispatched on 28.01.2011, the Memo of Appeal and pre-deposit made on 28.03.2011 both cannot be held to be beyond 60 days limitation period for filing appeal under section 45AA of the Act of 1948. The interpretation advanced by the Respondent on the provisions of Section 45AA of the Act as to the date of commencement of the limitation period i.e. from the date of the order itself, would be unacceptable construction of the said provision, as it is only from the date of the knowledge or receipt of the order that an aggrieved party can take recourse to the remedy of appeal or revision before the higher forum. The literal construction of the provisions would lead to absurd results as in case the order has not been dispatched by the issuing authority for a long period of time, may be beyond 60 days period for filing an appeal also, an aggrieved person would be denied a valuable substantive right of appeal under section 45AA of the Act. No such construction which could render the instant provision and the remedy of appeal otiose or meaningless in the eye of law, can be countenanced. Provisions in other such Statute granting remedy of appeal such as Income Tax Act, Sales Tax Act and Service Tax Act also provide that the period of limitation commence from the date of receipt or service of the order when adverse consequences befall on the assessee by the orders passed by the Original Authority in such proceeding. It is not a case of the Respondent that the order dated 04.01.2011 was passed in the presence of the petitioner.

5. Section 45-AA of E.S.I. Act, 1948, which contains the provisions of appeal from orders passed by Original Authority, reads as under:

Section 45-AA. Appellate authority.- If an employer is not satisfied with the order referred to in section 45-A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty-five per cent of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation:

Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as may be specified in the regulation.)

Pari-materia provisions such as above are also found in Section 48-AA of the Advocates Act, 1961, where also the review of an order can be made within sixty days of the date of that order.

6. The Hon'ble Supreme Court in the judgment rendered in the case of D. Saibaba v. Bar Council of India and another reported in (2003) 6 SCC 186, has interpreted expression "sixty days from the date of that order" in a purposive manner to give the expression a meaning, which will carry out the purpose and make the remedy of review meaningful, practical and effective. The Apex Court has accordingly held that where literal construction or plain meaning may cause hardship, futility, absurdity or uncertainty, the Court may prefer purposive or contextual construction to arrive at a more just, reasonable and sensible result. Hence, the time period of limitation of sixty days for invoking the power of review has been held to be counted from the date of communication of the order.

7. In the facts of the instant case, therefore, the approach of Appellate Authority can easily be said to be pedantic in nature. Counting the period of limitation from the date of order would not only render the remedy meaningless but may also cause hardship and uncertainty to the aggrieved person, thereby denying him a substantive remedy of appeal. Therefore, if the order impugned impugned dated 5th June, 2016 has been dispatched only on 28th January, 2011, the rejection of appeal on the ground of expiry of limitation period of sixty days from the date of the order i.e., 4th January, 2011 would be a wholly unreasonable and unjust approach on the part of the Appellate Authority. It is, therefore, held that since the order passed under Section 45A of E.S.I Act, 1948 imposes adverse consequences including pecuniary liability on the employer assessee, the period of limitation to prefer an appeal under Section 45-AA of the Act should be meant to commence from the date of communication of the order. This would prevent any undue hardship and uncertainty in the matter of availing the substantive remedy of appeal granted under the relevant provisions of the Act.

8. On considering the totality of the facts and the reasons discussed hereinabove, the impugned order at Annexure-6 dated 05.06.2014 refusing to entertain the appeal preferred by the petitioner under section 45AA of the E.S.I. Act, 1948 on the grounds of delay, cannot be upheld in the eye of law as well as on facts. It is accordingly quashed. The Appellate Authority would now proceed to consider the petitioner's appeal in accordance with law and on merits. Needless to say, petitioner would co-operate in the proceeding.

9. The writ petition is allowed.