(1996) 07 MAD CK 0123

In the Madras High Court

Case No : Writ Petition No. 10895 of 1987

Special Officer, Salem Co-operative Primary Land Development Bank	APPELLANT
Vs	
Deputy Commissioner of Labour and Another	RESPONDENT

Date of Decision : 31-07-1996

Acts Referred:

- Limitation Act, 1963 — Section 29, 5
- Payment of Gratuity Act, 1972 — Section 7(7)
- Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 25(2)

Citation : (1998) 3 LLJ 1168

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Single Bench

Advocate : M.R. Ragavan, for the Appellant; A. Paramasivam, G.A. For Respondent No. 1 and A.K. Kumaraswamy, for the Respondent

Final Decision : Dismissed

Judgement

S.M. Abdul Wahab, J.—This Writ Petition has been preferred praying for calling for the records of the first respondent in A.4/13867/87 dated August 20, 1987 to quash the same and to direct the first respondent to consider the petition dated August 13, 1987 filed by the petitioner for condoning the delay.

2. The case of the petitioner is that the second respondent filed an application for payment of gratuity in P.G. Application No.85/86 before the Controlling Authority. It was contested and the Controlling Authority awarded a sum of Rs. 10,500/ - to be paid to the second respondent by the petitioner. The said order was passed on March 4, 1987. It was served on the petitioner on March 16, 1987. Since the Special Officer was transferred and relieved on July 18, 1987, no appeal was filed against the order of the Controlling Authority in time. When the new incumbent took charge as Special Officer, he felt that an appeal should be filed against the said order of the Controlling Authority. Accordingly, on August 13, 1987 an appeal was preferred. An application was also filed for condoning the delay. On

August 20, 1987 the first respondent rejected the appeal on the ground that the appeal was filed beyond the time. Hence the Writ petition in the High Court.

3. A counter has been filed by the second respondent. As the petitioner did not settle the gratuity account in spite of several reminders, he was forced to approach the Controlling Authority. The only contention before the Controlling, Authority was that the petitioner was not liable to pay gratuity for the period from June 1, 1961 to September 30, 1971. The Controlling Authority directed payment of Rs. 10,500/-. Though the Controlling Authority has been specifically conferred with the power to entertain application for gratuity beyond time, no such power is given to the appellate authority under the provisions of the Act. However, the reasons assigned by the petitioner for delay are not sustainable.

4. The learned Counsel for the petitioner contended that even though the Controlling Authority is not a Court, in the strict sense, it has got all the powers of a Court and therefore, u/s 29 of the Limitation Act read with Section 5 of, the said Act, it has got power to condone the delay.

In support of his contention he has relied upon the following judgments :

(1) The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma,

(2) 1993 T.L.N.J. 362

(3) 1995 T.L.N.J. 124

5. In The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, the petition was filed before the District Judge, Tellicherry, u/s 16(3) of the Indian Telegraph Act, 1885. One of the contentions was that the petition was barred by time under Article 137 of the Limitation Act, 1963. When the matter finally was taken tothe Supreme Court, the Supreme Court has held that :

"The alternation of the division as well as the change in the collection of words, in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure."

Therefore, in the said case, the question was whether the applications under the CPC are the only applications to which the Limitation Act applies. But, we are not concerned with such a case here.

6. The second decision cited by the learned Counsel is 1993 TLNJ 362 T. Thirumalai v. The Madurai District Pandian Consumers Cooperative Wholesale Stores Ltd., Madurai. In the said case, the question was whether the authority under the Payment of Wages Act is a Court or not. The single Judge of this Court considered the position that person who had worked as a Judge of Civil Court or as a Stipendiary Magistrate was also eligible to be appointed as authorities under the Payment of Wages Act and also an appeal is provided to the District Judge and held that the authority would be the one who must be brought to my notice that the Controlling Authority is a person of the nature mentioned above and

further the appeal is not to the District Judge as seen in the case of the Payment of Wages Act.

7. The next decision cited by the learned Counsel is 1995 TLNJ 124 Sivabushanam Ammal v. Commissioner, Corporation of Madras. It is also not helpful to the petitioner. There again another single Judge of this Court has taken the view that the Taxation Appeal Committee is a Court and hence the said Committee has exercised its power u/s 5 of the Limitation Act for condoning the delay. The learned Judge in the said case has considered the various aspects of the Taxation Appeal Committee. He has observed as follows :

"As per Rule 12(2) in Schedule V of the Madras City Municipal Corporation Act, 1919, as substituted by G.O.Ms. 1176 dated December 10, 1987, the Taxation Appellate Tribunal shall consist of a Judicial Officer not below the rank of a Sub Judge and hence, the Taxation Appellate Tribunal, in my opinion, has to be treated as a Court, for the purpose of Section 5 of the Limitation Act, 1963. The Taxation Appeals Committee, apart from having the trappings of Judicial Tribunal, has power to give a decision and a definite judgement which has finality and authoritati veness which are the essential tests of a judicial pronouncement and as such, in my view, it falls within the meaning of the term ''Court'' used in Section 5 of the Limitation Act."

But, in this case, whether the Controlling Authority to be appointed under the Act should be a Judicial Officer or not was not brought to my notice. The learned Counsel for the petitioners was not in a position to show any such provision in the Act or the Rules. On the other hand, he simply relied on Section 7(7) of the Payment of Gratuity Act, 1972 and Rule 18 of the Tamil Nadu Payment of Gratuity Rules, 1973. A reading of the Section and the Rule does not show that the authorities to be appointed under the said Act are Judicial Officers and they have the trappings of a Court while functioning as the Controlling Authority as well as the Appellate Authority. Therefore, I am not in a position to accept the contention of the learned Counsel for the petitioner that the Appellate Authority under the Payment of Gratuity Act has to be construed to be a Court.

8. Section 29 of the Limitation Act, 1963 contemplates the application of the provisions of the limitation only to Courts. A reading of Subsections (1) and (2) to Section 29 given below, shows that the application need not be under the CPC alone, but under any other Act. local or central. Section 29(1) and (2) of the Act reads as follows :

"29. Savings - (1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872.

(2) Where any special or local law prescribes for any suit, appeal or application, a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the

provisions contained in Section 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

9. In The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, it has been held as follows :

"Thus the principle that emerges is that if the Legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time limit and no further then the Tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time limit specified in the staute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act."

Finally, the Supreme Court has opined that the object, the scheme and language of Section 10 of the Sales Tax Act do not permit the invocation of Section 14(2) of the Limitation Act either in terms or in principle. In the light of the above decision of the Supreme Court, if we consider the provisions of the Payment of Gratuity Act, I feel that there is no justification for applying Section 5 of the Limitation Act for a belated petition before the appellate authority.

10. Section 7(7) of the Payment of Gratuity Act, 1972 reads as follows :

"Any person aggrieved by an order under Sub-section (4) may, within, sixty 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 sixty days extend the said period by a further period of sixty days."

A reading of the above said provision shows that the time limit for preferriing appeal is sixty days. The Appellate Authority is also given power to condone delay of another 60 days. When the time limit is prescribed and also a power to condone the delay upto a limit is also granted, there is no scope for having recourse to the Limitation Act, especially in the absence of any provision in the enactment concerned. As we have stated earlier, Section 29(1) and (2) also is not applicable to the proceedings under the Payment of Gratuity Act.

11. The learned Counsel raised another argument that in some enactments like the Rent Control Act. there is a prohibition in Tamil Nadu Buildings (Lease and Rent Control) Act and therefore the time prescribed under such enactments cannot be extended, but when there is no such implied prohibition, the time can be extended by applying Section 5 ofthe Limitation Act. In the Tamil Nadu

Buildings (Lease and Rent Control) Act, 1960, the Proviso to Section 25(2) reads as follows :

"Provided that the High Court may, in its discretion, allow further time not exceeding one month for the filing of any such application, if it is satisfied that the applicant had sufficient cause for not preferring the application within the time specified in this sub-section."

The Proviso to Sectiion 7(7) of the Payment of Gratuity Act reads as follows :

"Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the Controlling Authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under Sub-section (4) or deposits with the appellate authority such amount."

It is also 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 sixty days, extend the said period by a further period of sixty days.

12. The learned Counsel points out that in the Tamil Nadu Buildings (Lease and Rent Control) Act, the words" not exceeding " are found in proviso to Section 25(2), which implies a prohibition for extension of further time. But such words are not therein the Proviso to Section 7(7) of the Payment of Gratuity Act. Therefore, there is no implied prohibition for having recourse to the Limitation Act.

13. As I have already pointed out, Section 29 of the Limitation Act is not at all applicable to a proceeding before the authorities under the Payment of Gratuity Act, 1972. Secondly, the Proviso to Section 25(2) of Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 is in negative form, while the Proviso to Section 7(7) of the Payment of Gratuity Act has contained only a positive word: Hence it cannot be contended that there is prohibition in the former enactment and the same is not in the later enactment.

14. For all the foregoing reasons, I am unable to agree with any of the contentions raised by the learned counsel for the petitioner. The Appellate Authority has rejected the appeal on the ground that the appeal was not filed within 120 days. On the other hand, it was filed after 150 days. Therefore, it has rightly rejected the appeal. I am not able to interfere with the order of the Appellate Authority. Hence, this writ petition is dismissed. However, there will be no order as to costs.