(2004) 11 AHC CK 0142

In the Allahabad High Court

Case No : C.M.W.P. No''s. 48967 and 48968 of 2004

U.P.S.R.T. Corporation	APPELLANT
Vs	
Ram Prakash and Others	RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:
Limitation Act, 1963 — Section 29(2), 5
Payment of Gratuity Act, 1972 — Section 7(7)

Citation : (2005) 1 AWC 393 : (2005) 1 ESC 295 : (2005) 104 FLR 312 : (2005) 1 LLJ 1072

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Samir Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard counsel for the petitioner.

2. These two writ petitions raise similar questions and are being decided by this common order. It is sufficient to note facts of Writ Petition No. 48967 of 2004 for disposal of both the writ petitions.

3. By the writ petition, prayer has been made for quashing the orders dated 18th October, 2001 passed by Controlling Authority.

4. On an application filed by the respondents under the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act), an order was passed by the Controlling Authority on 18th October. 2001. Against the said order an appeal was filed by the petitioner on 17th December, 2003, i.e., after two years and one month. The appellate authority has dismissed the appeal on the ground that according to Section 7(7) of the Act, the appellate authority has no jurisdiction to condone the delay of more than 120 days.

5. Learned counsel for the petitioner contended that Section 5 of the Limitation Act will be applicable and the appellate authority will have Jurisdiction to condone

the delay in filing the appeal even beyond 120 days by aid of Section 5 of the Limitation Act.

6. I have considered the submissions and perused the record.

7. Section 7(7) of the Act provides appeal against an order passed under Sub-section (4) within sixty days from the date of receipt of the order. Section 7(7) is extracted below :

" 7. Determination of the amount of gratuity.-

(1).................. .... (7) Any person aggrieved by an order under Sub-section (4), may, within sixty days from the date of the 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 :

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."

8. The first proviso to Sub-section (7) of Section 7 of the Act provides that if the appellate authority is satisfied that the appellant was prevented by sufficient cause from preferring appeal within the said period of sixty days, he can extend the said period by a further period of sixty-days. From a perusal of the said provision, it is thus clear that power to condone the delay is only for a further period of sixty days. Sub-section (7) of Section 7 of the Act, thus provides that provision does not empower condonation of delay beyond 60 days. in the present case appeal was filed beyond more than two years and according to provisions of Sub-section (7) of Section 7 first proviso, the appellate authority does not have power to condone the delay beyond sixty days.

9. Learned counsel for the petitioner has submitted that with the aid of Section 5 of the Limitation Act, the appellate authority can condone the delay. Section 5 of the Limitation Act provides for extension of prescribed period in certain cases. Section 5 of the Limitation Act provides that appeal may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. Section 29 of the Limitation Act which is relevant for the purposes is extracted below :

"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 Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing In this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in Section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882, may for the time being extend ."

10. Section 29(2) of the Limitation Act provides that 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 Sections 4 to 24 shall apply only insofar as, and to the extent to which they are not expressly excluded by such special or local law. By a conjoint reading of Section 29(2) of the Limitation Act read with Section 7(7) of the Act, it is clear that extension as contemplated u/s 5 of the Limitation Act is permissible for a period of sixty days. The extension of the limitation beyond days has to be read as excluded by necessary implication. By virtue of Section 29(2) of the Limitation Act read with Section 7(7) of the Act it has to be learnt that there is no power with the appellate authority to extend the limitation beyond sixty days. The Apex Court in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, had occasion to consider the provisions of Sections 217 and 166 of Motor Vehicles Act, 1988. The limitation as prescribed was six months from the date of accident. Section 166(3) of Motor Vehicle Act, as enacted provided :

"166. Application for compensation.-

(1)................ .... (3) No application for such compensation shall be entertained unless it is made within six months of the occurrence of the accident :

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time."

11. In the case before the Apex Court accident took place on 22.1.1989. The

Motor Vehicle Act, 1988 came into force with effect from 1st July, 1989. The period of limitation for filing a claim petition both under the old Act and the new Act being six months, expired on 22.7.1989. The claim petition was filed belatedly on 15.3.1990 with a prayer for condonation of delay. The Apex Court considering the provisions of Section 166(3) of Motor Vehicles Act held that the limitation has to be governed by the new law and condonation being permissible only for a maximum period of one year, the application could not have been entertained for condonation after one year from the date of accident. The order of the Claims Tribunal dismissing the application as barred by time was upheld by the Apex Court. The Apex Court in the said judgment held that question of condonation of delay must be governed by new law. The provisions of Section 166(3) of Motor Vehicles Act which was considered by the Apex Court in the said judgment is almost similar to provisions of Section 7(7) of the Act which is under consideration in the present case. The judgment of the Apex Court as mentioned above, fully supports the view which is being taken in this case.

12. In view of the foregoing discussions. It is clear that the appeal filed by the petitioner was rightly dismissed by the appellate authority. No grounds have been made out to interfere with the impugned orders.

13. The writ petitions lack merit and are summarily rejected.

