

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 1st OF DECEMBER, 2022

MISC. PETITION No. 4278 of 2022

BETWEEN:-

**YUG DHARMA PUBLIC SCHOOL
THROUGH ITS PRINCIPAL SACHIN
PRAJAPATI S/O SHRI MANGILAL
PRAJAPATI, AGED ABOUT 39 YEARS,
R/O OPPOSITE KISONI JODE, ASHTA
ROAD SHUJALPUR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI MANOJ MANAV, ADVOCATE)

AND

**EMPLOYEES PROVIDENT FUND
ORGANISATION REGIONAL PROVIDENT
FUND COMMISSIONER II R/O 7
BHARATPURI ADMINISTRATIVE AREA
DEWAS ROAD (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI PANKAJ KUMAR JAIN, ADVOCATE)

.....

*This petition coming on for orders this day, the court passed
the following:*

ORDER

01. This petition has been filed by the petitioner -Yug Dharma Public School under Article 226 r/w 227 of the Constitution of India,

against the order dated 28.07.2022, passed by the Presiding Officer, Central Government Industrial Tribunal (CGIT), Jabalpur wherein, the petitioner's appeal filed under Rule 7 of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997 has been rejected solely on the ground of its limitation as according to Rule 7, the limitation of 60 days is provided which can be extended to further 60 days' period, whereas, the appeal has been preferred after a period of 15 days of the extended period of limitation.

02. Shri Manoj Manav, counsel appearing for the petitioner has submitted that the aforesaid provision of the Limitation Act cannot be construed strictly as has been held by the Calcutta High Court in its decision rendered in the case of *C D Steel Pvt. Ltd. and others Vs. Assistant Provident Fund Commissioner* reported as *2022 SCC Online Cal 1665*. (Relevant paras are 19, 20 & 21), and also in the case of *Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper and Another Vs Excise and Taxation Officer, Sunder Nagar/Assessing Authority* reported as *(2020) 17 SCC 692* (Relevant paras are 6, 20, 28 & 29).

03. The petition has been opposed by the respondent/Employees' Provident Fund Organization and a reply has also been filed.

04. Shri Pankaj Kumar Jain, learned counsel appearing for the respondent has submitted that no illegality has been committed by the Appellate Authority in rejecting the petitioner's appeal on the ground of delay only. It is submitted that under the proviso of Rule 7 of the

Rules, if the appeal is not filed within the original period of limitation of 60 days, the delay cannot be condoned beyond the extended period of 60 further days..

05. In support of his contention, Shri Jain has relied upon the decisions rendered by the Supreme Court in the case of as also a Constitutional Bench *Commissioner of Customs and Central Excise Vs Hongo India Private Limited and Another* reported as (2009) 5 *SCC 791* (Relevant paras are 16, 18 & 32).

06. Heard counsel for the parties and perused the record.

07. So far as the Rule 7 of the Rules of 1997 is concerned, the same reads as under:-

“7. Fee, time for filing appeal, deposit of amount due on filing appeal.—

(1) Every appeal filed with the Registrar shall be accompanied by a fee of Rupees five hundred to be remitted in the form of Crossed Demand Draft on a nationalized bank in favour of the Registrar of the Tribunal and payable at the main branch of that Bank at the station where the seat of the said Tribunal situate.

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal.

Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.

Provided further that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75% of the amount due from him as determined

under Section 7-A. Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.”

(emphasis supplied)

08. A perusal of the aforesaid Rule clearly reveals that the limitation to file an appeal is 60 days which can be extended for a further period of 60 days subject to sufficient cause being shown.

09. Counsel for the petitioner has submitted that there is no specific exclusion of Limitation Act, 1963 in the aforesaid provision and thus, the extended period of 60 days can still be extended to condone the delay and the application filed under Section 5 of the Limitation Act would be maintainable. However, so far as the decision rendered in the case of *Commissioner of Customs and Central Excise* (supra) is concerned, the relevant paras 16, 18 & 32 of the same reads as under:-

16) Reliance was placed to Section 5 and Section 29(2) of the Limitation Act which read as under:

"5. Extension of prescribed period in certain cases.
- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, 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."

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"29. Savings.- (1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872 (9 of 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 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 and Section 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."

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18. Learned Additional Solicitor General relying on the judgment of this Court in Union of India vs. M/s Popular Construction Co., (2001) 8 SCC 470 contended that in the absence of specific exclusion of the Limitation Act in the Central Excise Act, in lieu of Section 29(2) of the Limitation Act, Section 5 of the same is applicable even in the case of reference application to the High Court.

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32) As pointed out earlier, the language used in Sections 35, 35-B, 35 EE, 35G Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

(emphasis supplied)

10. A perusal of the aforesaid decision relied upon by the counsel for the respondents clearly reveals that when a particular Act itself provides for limitation period and also the extended period of limitation, the provisions of Limitation Act cannot be invoked as the applicability of the Limitation Act is barred by the operation of the special Act. In such circumstances, even if under Rule 7, the provisions of Limitation Act are not specifically excluded, in the light of the extended period of limitation contained in the same, it cannot be said that the Limitation Act would be applicable..

11. So far as the decision by the Calcutta High Court in the case of *C D Steel Pvt. Ltd.* is concerned, that the Act of 1952 is beneficial legislature and should be dealt with leniently , with due respect to the learned Judge of the Calcutta High Court, this Court begs to defer with the aforesaid preposition in the light of the decision in the case of *Commissioner of Customs and Central Excise* (supra) and even otherwise, as has been rightly pointed out by the counsel for the respondents that the Act of 1952 is a beneficial legislation not for the employers but, for the employees and in such circumstances also, the aforesaid decision in the case of *C D Steel Pvt. Ltd. and others* (Supra) cannot be relied upon by this Court.

12. The petitioner has also relied upon the decision in the case of *Superintending Engineer* (Supra) but it is found that in the aforesaid case, the question before the Supreme Court was of the interpretation of Section 48 of Value Added Tax Act, 2005 and on perusal of

Section 48 clearly reveals that there is no such extended period of limitation. In view of the same, the decision relied upon by the petitioner is of no avail.

13. Resultantly, this Court is of the considered opinion that no illegality has been committed by the learned Judge of the Appellate Court in passing the impugned order by dismissing the appeal on the ground of delay.

14. Resultantly, the petition being devoid of merits, is hereby **dismissed.**

(SUBODH ABHYANKAR)
JUDGE

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