

ORDER SHEET
CENTRAL GOVT.INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR(MP)

CASE NO. CGIT/LC/EPFA/04/2020
Ashok Kumar Gupta & anr. Vs. APFC, Raipur

Date of order of proceeding	Order or proceeding with signature of Presiding Officer	Signature of parties or pleaders where necessary
5-4-2021	<p>Taken up.</p> <p>Shri A.K.Shashi, learned counsel for the appellant.</p> <p>Shri J.K.Pillai, Learned counsel for the respondent.</p> <p>Perused the report of the Registry.</p> <p>The impugned order is of 6-6-2007. The appeal has been preferred on 13-1-2020. The appellant has filed an application for condonation of delay with affidavit. The Respondent has filed reply to the application , which is on record.</p> <p>I have heard learned counsel for both the sides on application for condonation of delay and have gone through the records.</p> <p>According to the appellant the impugned order was passed on 6-6-2007 and arrest warrant was issued in pursuance of this order. He approached Hon'ble High court by way of filing Writ Petition No.2610/09 which was disposed by Hon. Single Bench of Hon.Chhattisgarh High Court directing the appellant/petitioner to file a review petition before the concerned Authority which shall be decided as per law. It is the case of the appellant that he did file a review petition before the Respondent Authority but the Respondent Authority did not decide it rather transferred it to Recovery Officer who did not have jurisdiction to decide the Review Petition as he was not the Authority who passed the impugned order, sought to be reviewed. As is the case of appellant that he preferred another Writ Petition No.29/2012 against the order of the Reviewing Authority which was disposed vide order dated 29-7-2019. The appellant further filed a Writ Appeal No.555/2019 which was disposed by Hon. Division Bench of Hon'ble High Court vide order dated 6-</p>	

12-2019 and appellant was given permission to withdraw the appeal with liberty to file it before appropriate forum . It is the case of the appellant, as submitted by learned counsel for the appellant that he did approach Hon'ble High court first and acted under the directions of Hon'ble High Court, hence, he is not at fault in pursuing remedies in time, hence the delay in this case must be condoned, otherwise the appellant shall be put to great injustice. The learned counsel further submits that it is the policy of law that disputes be settled on merits and not on technical grounds.

ON the other hand, learned counsel for respondent has referred to Rule 7(2) of the Employees Provident Funds and Misc.Provisions Act, 1952 and has submitted that the 'Act' itself is self contained with respect to limitation, hence Limitation Act,1963 does not apply in the present case and accordingly, there is no ground for condonation of delay. He also submits that , it is no where in the order of Hon. Division Bench of Hon'ble High court indicative of condonation of delay in approaching appropriate forum. Learned Counsel submits that simply because the appellant was given liberty to approach appropriate forum, does not give him a license to flout limitation.

Rule 7(2) of the Employees Provident Funds and Misc.Provisions Act, 1952 reads as follows:-

7(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.

As it is clear that the 'Act' is self contained with regard to limitation and since it has special provision regarding limitation in the 'Act' itself, the general principles of limitation have no application in the case in hand.

The point still remains that the appellant has been pursuing remedies before Hon'ble High Court, he also filed a Review Petition under order and directions of Hon'ble High Court which was not decided by Appropriate Authority which has passed the impugned

order and naturally the appellant had to approach again to Hon'ble High Court against the order of Reviewing authority who dismissed the review. The sum total of the circumstances is that the appellant had been pursuing remedies at wrong forum and when this fact was realized the appellant was granted permission to withdraw the proceedings and approach the appropriate forum .

The point which arises for consideration at this juncture is whether by permitting the appellant to withdraw the Writ Appeal and granting liberty to approach the appropriate forum the Hon'ble Division of Hon'ble High Court impliedly condoned the "delay". Answer to this question in my opinion should be yes because any other answer will defeat the interest of justice, hence in the light of these circumstances, which are very exceptional and peculiar as stated above, keeping in view the spirit of order of Hon'ble High court in Hon. Division Bench as mentioned above, the application for condonation of delay deserves to be allowed.

Accordingly application for condonation of delay is allowed.

Register.

Respondents to counter within 30 days from today with documents after serving a copy thereof to learned counsel for the appellant. Rejoinder if any, within 15 days thereafter.

List on 18-7-2021 for arguments.

PRESIDING OFFICER