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LAWS(GJH) 2012 11 74

HIGH COURT OF GUJARAT

Coram :- G. B. SHAH, V. M. SAHAI, JJ.

Decided on 2012 November 06

Letters Patent Appeal No. 1345 Of 2012 In Special Civil Application No. 3286 Of 2012

Tops Security Ltd

VERSUS

LABOUR ENFORCEMENT OFFICER

Advocates:

NAVIN K. PAHWA, PRATIK P. THAKKAR

[\[-\] Referred Judgments \(1\)](#)

[D R INDUSTRIES LTD VS. UNION OF INDIA](#) [2008 3 GLH 662] [REFERRED TO]

[\[-\] Cited At \(1\)](#)

[G S R T C VS. ANWARHUSAIN MAMHADBHAI KADRI](#) [LAWS(GJH)-2009-2-259][REFERRED TO]

[\[-\] Referred Acts:](#)

MINIMUM WAGES (CENTRAL) RULES, 1950, R. 29(4)

[MINIMUM WAGES ACT, 1948 , S. 20\(2\)](#)

Citations:

LAWS(GJH) 2012 11 74,

Expert View:

- A. **Union of India and others, 2008 (3) GLH 662 and the decision in Gujarat State Road Transport Corporation through Divisional Controller, Rajkot v__ . If the defaulting party is successful in showing sufficient cause, by filing an application within one month, why the ex-parte order be not set aside and why the employer or his representative failed to appear on the specified dates, the authority has the power to direct rehearing of the matter after issuance of notice and the defaulting party should show sufficient cause__ .**
- B. **The provision of law involved in that case was Section 7(7) of the Payment of Gratuity Act wherein power is conferred to condone the**

delay for a further period of 60 days beyond the prescribed period of 60 days__ . AFTER the argument of the learned counsel for the appellant was over, he made a prayer that he may be permitted to withdraw the appeal as well as the writ petition with liberty to file fresh writ petition so that he may challenge the order dated 30__ .

- C. LEARNED counsel for the appellant has urged that the respondent has filed an application with delay condonation application which was condoned by the authority and, therefore, the appellant is entitled for similar treatment and delay in filing the application under Rule 29 (4) of the Rules was liable to be condoned__ As it has not been presented within one month of the date of the order, it does not meet with the requirements of Rule 29(4), therefore, the order dated 30th April, 2010 cannot be set aside nor can the matter be reheard__ On the facts of the case, it was held that insofar as the order of the Appellate Authority is concerned, no fault could be found with the said order, as the Appellate Authority could not have condoned the delay beyond 60 days, inasmuch as the Authority's power is circumscribed by the provisions of Statute__**
- D. IN our opinion, this decision is not applicable to the facts of the case as the appellant came to know about the order dated 30.4.2010 on 10.5.2010, but the appellant filed undated application under Rule 29 (4) of the Rules only on 10.8.2010 without depositing any amount. - - AFTER the argument of the learned counsel for the appellant was over, he made a prayer that he may be permitted to withdraw the appeal as well as the writ petition with liberty to file fresh writ petition so that he may challenge the order dated 30.4.2010 as well on merits.**

JUDGMENT / ORDER

1. THIS Letters Patent Appeal has been filed challenging the judgment dated 8.10.2012 passed by the learned Single Judge in Special Civil Application No.3286 of 2012 by which the learned Single Judge has dismissed the writ petition, affirming the order dated 27/28.12.2011 passed by the respondent.

2. WE have heard Mr. Navin K. Pahwa, learned counsel assisted by Mr. Pratik P Thakkar appearing for the appellant. .

The brief facts are that the appellant is a Limited Company and is providing security services. The respondent Labour Enforcement Officer (Central) (for short 'the authority') filed a Claim Application being MWA No.68 of 2009 before the authority under the Minimum Wages Act, 1948 (for short 'the Act'). Since the appellant did not appear in the aforesaid proceedings, an ex-parte order was passed on 30.4.2010 by the authority by which the appellant was directed to deposit Rs.1,07,91,761.20 (Rupees One Crore Seven Lacs Ninty One Thousand Seven Hundred Sixty One and Twenty Paise), being the amount of difference of wages i.e. Rs.9,81,069.20ps. together with the amount of compensation amounting to Rs.98,10,692.00 payable to 826 employees, within 15 days of the said order. 3.1 The appellant thereafter filed an application under Rule 29 (4) of the Minimum Wages (Central) Rules, 1950 (for short 'the Rules'). The application filed by the appellant did not bear any date, but the authority has recorded a finding that it

was received on 10.8.2010. The application was filed under Rule 29 (4) of the Rules for setting aside the ex-parte order dated 30.4.2010 passed under Section 20 (2) of the Act. The said application has been rejected by order dated 27/28.12.2011 by the respondent on the ground that the said undated application has not been presented within one month from the date of the said order. 3.2. Being further aggrieved by the said order, the appellant preferred writ petition being Special Civil Application No.3286 of 2012 which came to be dismissed by the learned Single Judge on 8.10.2012.

3.1 The appellant thereafter filed an application under Rule 29 (4) of the Minimum Wages (Central) Rules, 1950 (for short 'the Rules'). The application filed by the appellant did not bear any date, but the authority has recorded a finding that it was received on 10.8.2010. The application was filed under Rule 29 (4) of the Rules for setting aside the ex-parte order dated 30.4.2010 passed under Section 20 (2) of the Act. The said application has been rejected by order dated 27/28.12.2011 by the respondent on the ground that the said undated application has not been presented within one month from the date of the said order. 3.2. Being further aggrieved by the said order, the appellant preferred writ petition being Special Civil Application No.3286 of 2012 which came to be dismissed by the learned Single Judge on 8.10.2012.

3. LEARNED counsel for the appellant has urged that the respondent has filed an application with delay condonation application which was condoned by the authority and, therefore, the appellant is entitled for similar treatment and delay in filing the application under Rule 29 (4) of the Rules was liable to be condoned. He placed reliance on the decision of the Division Bench of this Court in D. R. Industries Limited and another v. Union of India and others, 2008 (3) GLH 662 and the decision in Gujarat State Road Transport Corporation through Divisional Controller, Rajkot v. AnwarHusain Mohammadbhai Kadri, 2009 (2) GLR 1778.

4. THE argument of the learned counsel for the appellant that he may be given similar treatment has been dealt with properly by the learned Single Judge in paragraphs 19 to 27 of the judgment. The learned Single Judge has also considered Section 20 (2) of the Act and Rule 29 (4) of the Rules as well as the decision relied on by learned counsel for the appellant in G.S.R.T.C. (supra) and has held that the said decision was not applicable to the facts of the case and it was given on its own peculiar facts. Paragraphs 19 to 27 of the judgment of learned Single Judge is reproduced below :-

"19. The ex-parte order dated 30th April, 2010 has been passed by the respondent Authority under Sub Section (2) of Section 20 of the Act. Sub Rule (4) of Rule 29 states that if an order is passed by the Authority, under Sub Rule (2) or Sub Rule (3), it may be set aside on sufficient cause being shown by the defaulting party, within one month of the date of the order and the application shall then be reheard after service of notice. The time limit for filing an application under Sub Rule (4) of Rule 29 of the Rules is one month. If the defaulting party is successful in showing sufficient cause, by filing an application within one month, why the ex-parte order be not set aside and why the employer or his representative failed to appear on the specified dates, the authority has the power to direct rehearing of the matter after issuance of notice and the defaulting party should show sufficient cause. No power has been vested upon the Authority under Rule 29(4) to condone the delay after one month of the date of passing of the ex-parte

order. The Authority is obliged to act in accordance with the Rules and cannot exercise power beyond that conferred upon it by law.

20. In the present case, the impugned order dated 27/28.12.2011 passed upon the application of the petitioner under Rule 29(4) of the Rules, states that the said undated application, was received on 10.08.2010, seeking review of the order dated 30 th April, 2010. As it has not been presented within one month of the date of the order, it does not meet with the requirements of Rule 29(4), therefore, the order dated 30th April, 2010 cannot be set aside nor can the matter be reheard.

21. Upon perusal of provisions of Rule 29(4), it transpires that this provision deals with setting aside an ex-parte order, provided that the application has been filed within one month of the date of the said order. The said provision is more in the nature of review proceedings, regarding setting aside an ex-parte adjudication, but does not provide for condonation of delay beyond one month of the date of the order. In this view of the matter, the submissions made by learned advocate for the petitioner that the respondent Authority ought to have condoned the delay under Rule 29(4), since the delay in filing the application by the respondent was condoned under Section 20(2) of the Act, are not tenable. Insofar as the second proviso to Sub Section (2) of Section 20 is concerned, it clearly provides for condonation of delay on sufficient cause being shown, whereas there is no such power vested in the Authority under Sub Rule (4) of Rule 29. To avail of the benefit of Rule 29(4) of the Rules, the defaulting party has to show sufficient cause why the ex-parte proceedings should be set aside, within one month of the date of the ex-parte order. Admittedly, this has not been done by the petitioner within the prescribed period of one month. Under the circumstances, looking to the language of Rule 29(4), it cannot be said that the said impugned order dated 27/28.12.2011, passed by the Authority rejecting the application of the petitioner, is illegal or erroneous.

22. Reliance has been placed by the petitioner on Gujarat State Road Transport Corporation Through Divisional Controller, Rajkot (supra). That was a case under the Payment of Gratuity Act. Under Section 7(7) of that statute, the Appellate Authority has no power to condone the delay within a period of 60 days after the prescribed period of 60 days is over. This Court held that this provision would not restrict the power of the Court, under its writ jurisdiction. On the facts of the case, it was held that insofar as the order of the Appellate Authority is concerned, no fault could be found with the said order, as the Appellate Authority could not have condoned the delay beyond 60 days, inasmuch as the Authority's power is circumscribed by the provisions of Statute. However, on the facts of the case, the Court found that there was justification for condoning the delay, as the petitioner, in that case, had already deposited an amount of Rs.3,14,000.00 towards Gratuity, and the dispute was only with regard to the difference. In that factual situation, the Court set aside the order of the Appellate Authority by imposing costs.

23. The provision of law involved in that case was Section 7(7) of the Payment of Gratuity Act wherein

power is conferred to condone the delay for a further period of 60 days beyond the prescribed period of 60 days. Insofar as Rule 29(4) of the Rules is concerned, no power of condonation of delay is conferred upon the Authority, if the application is not filed within the prescribed period of one month.

24. Another aspect of the matter is that in Gujarat State Road Transport Corporation Through Divisional Controller, Rajkot (supra) the Court had interfered, as the petitioner had already deposited an amount of Rs.3,14,000.00 towards Gratuity. In the present case, no amount, whatsoever, has been deposited. Only a bare assertion has been made on behalf of the petitioner that the Court may put the petitioner to terms.

25. It may be noted that the petitioner has not invoked the writ jurisdiction of this Court, for the purposes of condonation of delay. The prayers made in the petition are only for quashing and setting aside the impugned order dated 27/28.12.2011 passed upon the application of the petitioner under Rule 29(4). Under the circumstances, when the writ jurisdiction of this Court has not been invoked for condoning the delay, the factors that weighed with Gujarat State Road the Court in case of Transport Corporation Through Divisional Controller, Rajkot (supra) are not attracted in the present case.

26. The cumulative result of the above discussion, is that under the Act, the Authority has no power to consider an application under Rule 29(4) of the Rules, if it is filed beyond a period of one month from the date of the ex-parte order.

27. Consequently, the impugned order, suffers from no error of law, so as to warrant interference by this Court."

So far as the Division Bench decision in D.R. Industries Limited (supra) is concerned, it was not placed before the learned Single Judge. However, we have gone through this decision wherein the Division Bench has held that right to appeal is a creature of the Statute and can be circumscribed by the conditions in the grant. The Parliament has power to provide for maximum period of condonation of delay. But the Division Bench observed that in extraordinary circumstances, delay could be condoned under Article 226 of the Constitution of India beyond the outer limit for filing appeal prescribed by the Statute.

5. IN our opinion, this decision is not applicable to the facts of the case as the appellant came to know about the order dated 30.4.2010 on 10.5.2010, but the appellant filed undated application under Rule 29 (4) of the Rules only on 10.8.2010 without depositing any amount. The application filed by the appellant was not bonafide and beyond the statutory period of one month for filing an appeal under Rule 29 (4). The Act is a beneficent piece of Legislation for the employees who are not paid minimum wages so that they make a justice from the authority and the employer should pay the employees minimum wages. If delay could be condoned beyond the statutory period fixed under Rule 29 (4), it is likely to defeat the very purpose of circumscribed period within which the appeal must be filed. The legislative intent cannot be given a go-bye while exercising powers under Article 226 of the Constitution of India. The Division Bench decision in D.R. Industries Limited was rendered while interpreting the provisions of the Central Excise Act, 1944. But in the facts of the instant case, this decision is not applicable. Therefore, we do not find any merits in the submission made by learned counsel for the appellant and the appeal deserves to be dismissed.

6. AFTER the argument of the learned counsel for the appellant was over, he made a prayer that he may be permitted to withdraw the appeal as well as the writ petition with liberty to file fresh writ petition so that he may challenge the order dated 30.4.2010 as well on merits. This prayer is totally misconceived. It was always open to the appellant to challenge both the orders. If the appellant in his wisdom did not choose to challenge the order on merits, this Court after the decision of writ petition, in Letters Patent Appeal cannot permit him to withdraw the appeal along with the writ petition. It will result in setting aside the order of learned Single Judge, if we permit the appellant to withdraw the writ petition. Therefore, the prayer made by learned counsel for the appellant that he may be permitted to withdraw the appeal as well as the writ petition cannot be accepted.

In the result, this Letters Patent Appeal fails and is accordingly dismissed summarily. Since the appeal has been dismissed, Civil Application for stay does not survive and is accordingly rejected.

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