

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.24405 OF 2023

Between:

M/s. A.P.Model School

... Petitioner

And

Central Government Industrial Tribunal-
Cum-Labour Court and another

... Respondents

JUDGMENT PRONOUNCED ON: 30.10.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

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< Gist:

> Head Note:

! Counsel for the Petitioner : Mr.P.Shanker Rao

**^ Counsel for Respondents : Mr.G.Venkateshwarlu
for R1 , and
Mr.T.Sasi Kumar,
for R2.**

? Cases Referred:

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. NO. 24405 OF 2023

ORDER :

Heard Mr.P.Shanker Rao, learned counsel for the petitioner, Mr.G.Venkateshwarlu, learned counsel for Central Government appearing on behalf of respondent No.1 and Mr.T.Sasi Kumar, learned Standing Counsel appearing on behalf of respondent No.2.

2. The petitioner has approached the Court, seeking the following relief:

"To issue a writ, order or direction more in the nature of a mandamus declaring the order under section 7(1) read with rule 7(2) of the EPF AND M.P.ACT 1952 IN I.A.No.1/2023 IN WPF APPEAL No.CGIT2016 (189/2018) dated 07/08/2023 of the first respondent it is against the principles of natural justice, illegal, arbitrary, Unconstitutional and consequently set-aside the same."

PERUSED THE RECORD :

3. The relevant portion of the impugned order dated 07.08.2023 passed in I.A.No.1/2023 in EPF Appeal No.CGIT 2016 (189/2018) passed by the Presiding Officer CGIT-cum-Labour Court, Hyderabad, reads as under :

“But as a matter of fact Respondent in his reply has categorically stated that the review application filed by the Appellant u/s 7-B was disposed of by the Respondent on 12.9.2014, that has not been countered by the appellant. Since the review application has been dismissed vide order dated 12.9.2014 whereby he was directed to comply the order passed by Assistant Provident Fund Commissioner. But the Appellant failed to comply the order dated 12.09.2014. Thus, the review petition stands disposed of by the PF authority. The limitation period for filing the appeal runs from the date 12.9.2014 and the appeal could have been filed within 60 days from the date of the said order. But the present appeal has been filed by the Appellant on 1.3.2016 with inordinate delay beyond limitation period of 60 days. The reasons furnished by the Appellant in support of his appeal are not plausible and sufficient to condone the delay in filing the appeal beyond limitation period.

It is pertinent to quote the decisions of Hon’ble High Court on the point of limitation period under EPF & MP Act, 1952 for filing appeal: -

The Hon’ble Delhi High Court in **Saint Soldier Modern Senior Secondary School Vs. Regional Provident Fund Commissioner reported in 2014(3) LLJ 308, have held, “In view of the fact that limitation is prescribed by a specific Rule, and condensation has also to be considered within the purview of that Rule alone and the provisions of the Limitation Act cannot be**

imported into Act and rules, the inevitable conclusion is that the Tribunal did not have the powers to condone the delay beyond a maximum period of 120 days as stipulated in Rule 7(2) of the Rules."

In Central Board of Trustees, EPFO Vs. Nasiruddin Biri Merchant Pvt. Ltd., reported in 2015(4) LLJ 232, Hon'ble Patna High Court held, "an aggrieved person can file an appeal within a period of 60 days from the date of issuance of the order/notification. However, the Appellate Tribunal has been authorized to condone further delay of 60 days. Meaning thereby, that in any event after expiry of 120 days from the date of issuance of the order, no appeal can be entertained nor delay can be condones by the Appellate Tribunal."

Thus, in view of the provision of Sec.7(1) read with Rule 7(2) and law laid down by the Hon'ble High Court and the facts and circumstances of the case, it is manifest that the present appeal has been filed beyond the limitation period of 120 days and appeal is barred by limitation. Further, the Tribunal has got no power to condone the delay in filing appeal beyond 120 days under the EPF & MP Act, 1952, hence appeal is liable to be rejected. Therefore, appeal is dismissed, being barred by limitation. Consign.

Ordered accordingly."

4. The counter affidavit filed by the 2nd Respondent, in particular, Paras 5, 6, and the relevant portion at para 9 and para 10, reads as under:

"5. I submit that Aggrieved by the order Petitioner establishment has filed Form-9 for

review of order under Section 7B of EPF and MP Act, 1952. For consideration of Review Application the Respondent Office has issued a letter dated 12.09.2014 to the Petitioner Establishment for submission of Coverage Proforma along with Form-5A and Bank Guarantee of 25% of assessed amount (i.e., Rs.2,99,637/-). The Respondent Office has given sufficient time to employer to submit said requisition till end of that financial year but Petitioner Establishment has failed to submit the same. Hence, on completion of financial year, as per the provisions u/S 8B of the Act, the Respondent Organization has issued Revenue Recovery Certificate for an amount of Rs.11,98,548/- to Recovery Officer for taking further recovery action.

6. It is submitted that in response to the averments made in Paragraph no.(c), that the enquiry under Section 7A was concluded on 22.07.2014. The Petitioner has filed a review petition under Section 7B of EPF & MP Act, 1952 on 04.09.2014. In reply to the Review Petition, the Petitioner was asked to submit 1. Coverage Proforma along with Form-5A and 2. Bank Guarantee of 25% assessed amount of Rs.11,98,548/- which comes to, Rs.2,99,637/- immediately. The Appellant has failed to submit the required documents till the end of Financial Year-2014-15. Hence, Recovery Certificate was issued under Section 8B of the Act for further recovery

actions. Upon initiation of Recovery Proceedings by issue of Attachment of Movable property in CP-2 dated 09.09.2015 and Attachment of Immovable property in CP-16 dated 09.09.2015, the employer remitted Rs.3,00,000/- on 02.11.2015 vide DD No.268449 dated 30.09.2015 drawn on Indian Overseas Bank towards Part Payment. On 03.12.2015 the Petitioner had assured to remit the dues by the next day failing which the Respondent can take over the transport vehicles (Annexure-A). This shows that the Petitioner has remitted Rs.3,00,000/- against Recovery actions initiated but not towards Bank guarantee of 25% assessed amount. Further he has also not contended the 7A/7B Order but accepted to pay the balance amount vide his letter dated 03.12.2015.

9. The Total strength of teaching of staff of the Petitioner's establishment is 26. On the day of the said inspection 20 teachers were present. The copy of the Attendance Register is submitted herewith for the kind perusal of the Hon'ble Court.

10. It is submitted that in response to the averments made in Paragraph no.(e), the said letter is dated 12.09.2014 from the Respondent, the bank guarantee of 25% of the assessed amount i.e., Rs.2,99,637/- out of Rs.11,98,548/- to be remitted by the Petitioner (as per Doc.No.22 of the W.P.). Whereas the payment shown Rs.3,00,000/- by way of Demand Draft, (as per

Doc.No.23 of W.P.), was dated 30.09.2015, i.e., more than 1 year of the said letter's date."

DISCUSSION AND CONCLUSION :

DISCUSSION :

5. It is a specific case of the Petitioner that the Petitioner's School was not covered under the EPF & MP Act, 1952 but on the ground that the Petitioner failed to pay the contributions for the period 01.07.2011 to May 2013 proceedings were initiated U/s.7A of the EPF and MP Act, 1952 and order passed to pay a sum of Rs.11,98,548/- on 22.07.2014 and against the said order the Petitioner had preferred review application U/s.7B of the EPF and MP Act, 1952 before the 2nd Respondent Authority on 04.09.2014 and the 2nd Respondent herein had issued letter for submission of proforma of coverage and Form 5A and Bank Guarantee for 25% assessed amount to take up the review application for which the Petitioner had deposited all the required documents including Demand Draft for Rs.3 lakhs before the Respondent Authority and the Hon'ble EPF Tribunal, New Delhi, numbered the Appeal

preferred by the Petitioner by ATA No.270(1) 2016 on 04.03.2016 and the Tribunal passed order to transmit the file initially to Southern Tribunal, Bangalore and later to Hyderabad Tribunal vide EPF Appeal No.2016 (189)/2018 as renumbered while admission of the above Appeal with IA No.1/2023 with a condone delay petition and vide impugned order dated 07.08.2023 the said Appeal is dismissed being barred by limitation and aggrieved by the same the Petitioner filed the present writ petition.

6. The main contentions put forth by the learned counsel appearing on behalf of the writ petitioner are as follows :

(i) The Respondent had not placed the order dated 12.09.2014 on record, but however stated in the counter that the review application was disposed of and the Court below came to a conclusion that the review application was disposed of on 12.09.2014 which according to the Petitioner is factually incorrect.

(ii) That the impugned order dated 07.08.2023 in IA No.1/2023 in EPF Appeal No.CGIT 2016 (189)/2018

is against the principles of natural justice and contrary to the judgment of the Apex Court since limitation starts from the date of disposal of the review application and in the present case petitioner contends that the review application had not been disposed of according to law since no notice was issued by the Respondent fixing the date of hearing in the review application.

(iii) The Petitioner contends the very applicability of EPF & MP Act, 1952 contending that the Petitioner M/s. A.P. Model School, Shankerpally, never engaged 20 members as on the date of coverage.

(iv) The order impugned is not a judicial order and not a reasoned speaking order.

(v) The Petitioner being aggrieved by the order U/s.7A preferred review under Sec.7B of the Act, 1952 and that the directions issued by the APFC for consideration of review application made U/s.7B is contrary to the enacted legislation.

(vi) The Petitioner prayed that the Petitioner is entitled for the relief as prayed for in the writ petition,

since the Petitioner is the person aggrieved since Petitioner's right had been adversely effected.

7. The learned counsel appearing on behalf of the 2nd Respondent placing reliance on the counter affidavit filed by the 2nd Respondent put's forth the following submissions :

(i) The total strength of the teaching staff of the Petitioner establishment is 26 and on the day of inspection 20 teachers were present and a copy of the attendance register is filed along with the counter affidavit before the Court evidencing the said fact and therefore the learned counsel contended that the Petitioner is not entitled for any relief as prayed for in the present writ petition since the specific plea of the Petitioner that the Petitioner's school is beyond the purview of the EPF & MP Act, 1952 is totally false and contrary to the record.

(ii) The counsel for the Respondent placed reliance on the order dated 08.11.2021 passed in WA No.531/2008 and contended that the learned Tribunal

has rightly dismissed the IA No.1/2023 in EPF Appeal No.CGIT 2016 (189)/2018, dated 07.08.2023.

(iii) Petitioner establishment was in default from date of coverage, hence inquiry was initiated under Section 7A of the EPF and MP Act, 1952 duly serving summons dated 26.06.2013. As many as 17 adjournments were given to the establishment and inquiry was prolonged over a period of one year but petitioner failed to justify/attend the inquiry and inquiry was concluded *ex parte* on the basis of available records vide order dated 23.07.2014 duly assessing Rs.11,98,548 for the inquiry period from July 2011 to June 2014.

8. Aggrieved by the said order, the Petitioner Establishment has filed Form-9 for review of order under Section 7-B of EPF & MP Act, 1952 and though sufficient time was given to the petitioner to submit certain requests as called for by the respondents office vide its letter dated 12.09.2014, the petitioner establishment failed to submit the same and hence on completion of financial year, as per the provisions under Section 8-B of the Act, the respondent

organization has issued Revenue Recovery Certificate for an amount of Rs.11,98,548/- to recovery officer for taking further recovery action and that the petitioner had remitted an amount of Rs.3,00,000/- against recovery action initiated but not towards bank guarantee of 25% assessed amount. The petitioner had not contested 7A/7B order, but accepted to pay the balance amount vide its letter dated 03.12.2015 and the learned counsel appearing on behalf of the 2nd respondent contended that the petitioner is not entitled for any relief as prayed for.

CONCLUSION:

9. The statutory provisions governing the field as contained under Rule 7 of the Tribunal (Procedure) Rules, 1997, are reproduced as under:

“Fee, time for filing appeal, deposit of amount due on filing appeal-

(1) Every appeal filed with the Registry shall be accompanied by a fee of two thousand rupees to be remitted in the form of crossed demand draft on a nationalised 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 is situated]

(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 a Tribunal unless he has deposited with the Tribunal [a Demand Draft Payable in the Fund and bearing] 75 per cent 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."

10. A bare perusal of order impugned dated 07.08.2023 passed in IA No.1/2023 in EPF Appeal No. CGIT 2016 (189/2018), and in particular para 7 of the said order, clearly indicates that the 1st Respondent proceeded with an understanding that the Review Application filed by the Petitioner U/s.7-B was disposed of by the Respondent on 12.09.2014 and the limitation period for filing the Appeal was calculated from the

date 12.09.2014 and the 1st Respondent held that the Appeal should have been filed within 60 days from the date of the said order and the Petitioner however had filed the Appeal on 01.03.2015 with an inordinate delay beyond limitation period of 60 days and further the 1st Respondent observed in the order impugned dated 07.08.2023 that the reasons furnished by the Petitioner in support of the said Appeal are not plausible and sufficient to condone the delay in filing the Appeal beyond limitation period. Referring to two judgments, (i) reported in (2014) 3 LLJ 308 in Saint Soldier Modern Senior Secondary School Vs. Regional Provident Fund Commissioner and (ii) the judgment reported in (2015) 4 LLJ 232 in Central Board of Trustees EPFO Vs. Nasiruddin Biri Merchant Pvt. Ltd., the 1st respondent held that the Appeal filed by the Petitioner is beyond the limitation period of 120 days and hence barred by limitation and further dismissed the Appeal very clearly observing that the Tribunal has got no power to condone the delay in filing Appeal beyond 120 days under the EPF & MP Act, 1952.

11. A bare perusal of the contents of the letter dated 12.09.2014 of the Asst. Provident Fund Commissioner addressed to the Petitioner herein vide AP/SRO/PTC/74029/Enf/Z-1/2014 reads as under :

"AP/SRO/PTC/74029/Enf/Z-1/2014, dated 12.09.2014

To

M/s. A.P. Model School
Shankarpally Villag,
Rangareddy District.

Sub: Submission of Form No.5-A and Bank
Guarantee – reg.

**Ref: Your Review application against 7A
dt.04.09.2014.**

Sir,

Please refer to the above cited.

In this regard, it is requested to submit the following documents in order to Review of your petition under Section 7-B of the Act.

1. Coverage Proforma along with Form No.5-A(enclosed)
2. Bank Guarantee of 25% assessed amount i.e., Rs.299637/- (Out of Rs.1198548/-)

Hence, you are directed to submit the above documents to the undersigned immediately."

12. Para 5 of the counter affidavit filed by Respondent No.2 reads as under :

"I submit that Aggrieved by the order Petitioner establishment has filed Form-9 for review of order under Section 7B of EPF and MP Act, 1952. For consideration of Review Application the Respondent Office has issued a letter dated 12.09.2014 to the Petitioner Establishment for submission of Coverage Proforma along with Form-5A and Bank Guarantee of 25% of assessed amount (i.e., Rs.2,99,637/-). The Respondent Office has given sufficient time to employer to submit said requisition till end of that financial year but Petitioner Establishment has failed to submit the same. Hence, on completion of financial year, as per the provisions u/S 8B of the Act, the Respondent Organization has issued Revenue Recovery Certificate for an amount of Rs.11,98,548/- to Recovery Officer for taking further recovery action."

13. In the counter affidavit filed by the 2nd Respondent in particular at para 5 (referred to and extracted above) it is very clearly stated that for consideration of Review application, the Respondent office has issued a letter dated 12.09.2014 to the Petitioner establishment for submission of coverage proforma along with Form – 5A and bank guarantee of 25% of assessed amount (i.e., Rs.2,99,637/-) and that

the Respondent office had given sufficient time to the Petitioner to submit the said requisition till the end of the financial year but the Petitioner establishment had failed to submit the same and hence on completion of financial year, as per the provisions U/s.8B of the Act, the Respondent organization has issued Revenue Recovery Certificate for an amount of Rs.11,98,548/- to Recovery Officer for taking further recovery action.

14. This Court opines that the observation at para 7 of the order impugned of the 1st Respondent dated 07.08.2023 in I.A.No.1/2023 in EPF Appeal No.CGIT 2016 (189/2018) that the Review application of the Petitioner filed U/s.7-B, has been disposed vide order dated 12.09.2014, is totally contradictory to the averments made at para 5 of the counter affidavit filed by the Respondent No.2. This Court is of the firm opinion that the 1st Respondent proceeded, by taking into consideration the date 12.09.2014 as the basis and observed in the order impugned dated 07.08.2023, that the Review application filed by the Petitioner U/s. 7-B as disposed by the Respondent on 12.09.2014, which as

borne on record is factually incorrect and contrary to the record. The 1st respondent further concluded that the Appeal filed by the Petitioner is barred by limitation and dismissed the same.

15. This Court opines that the 1st Respondent needs to reconsider the whole issue afresh again within a reasonable period, in the interest of justice, by giving due notice and reasonable opportunity to both the Petitioner and the 2nd Respondent herein, in accordance to law, and pass appropriate reasoned orders duly communicating the decision to the Petitioner and the 2nd Respondent herein.

16. Taking into consideration the aforesaid facts and circumstances of the case and in particular the specific averments made at para 5 of the counter affidavit filed by the 2nd Respondent and duly considering the contents of the letter dated 12.09.2014 of the Asst. Provident Fund Commissioner addressed to the Petitioner herein (referred to and extracted above), the Writ Petition is allowed as prayed for and the order

impugned dated 07.08.2023 passed in I.A.No.1/2023 in EPF Appeal No.CGIT 2016 (189/2018) is set aside and the matter is remitted back to the 1st Respondent for consideration of the whole issue afresh again by giving due notice and reasonable opportunity to both the Petitioner and the 2nd Respondent herein in accordance to law, in conformity with the principles of natural justice and pass appropriate reasoned order within a period of 4 weeks from the date of receipt of the copy of the order duly communicating the decision to the Petitioner and the 2nd Respondent herein. However, there shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Date: 30.10.2023

Note : L.R. Copy to be marked.
(B/o) *Yvkr.*

HON'BLE MRS. JUSTICE SUREPALLI NANDA

W.P.No.24405 OF 2023
(L.R.copy to be marked)

Date: 30.10.2023.

Yvkr