

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 1235/2010**

% Judgment delivered on: 02.03.2010

XAVIER INSTITUTE OF SOCIAL SERVICE Petitioner
Through: Mr. Rajiv Shukla, Advocate
versus

EMPLOYEES PROVIDENT FUND APPELLATE & others Respondents
Through: Mr. R.C. Chawla, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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1. By this petition filed under Article 226/227 of the Constitution of India, the petitioner seeks to challenge the impugned order dated 23.1.2010 passed by the EPF Appellate Tribunal dismissing the application moved by the petitioner seeking restoration of its appeal and order dated 17.07.2008 whereby the appeal filed by the appellant was dismissed for non-prosecution. Counsel for the petitioner also prays that the statutory appeal filed by the petitioner

be decided on its merits.

2. Brief facts relevant for deciding the present petition as set out by the petitioner are that the petitioner is an educational institution registered under the Societies Registration Act. An order dated 20.3.2003 was passed by the Regional Fund Commissioner-II, Ranchi against the petitioner, to which an appeal was filed which was registered as Appeal No. 492(3)03. Thereafter, appeal of the petitioner was fixed at camp hearing at Kolkata on 17.7.2008 where the representative of the petitioner due to ill health could not appear, and hence the said appeal was dismissed for non-prosecution. Thereafter, the petitioner filed an application to seek restoration of the appeal which was again fixed for a camp hearing at Bhubhneshwar on 23.1.2010 and was dismissed for being filed beyond the statutory period of 30 days. Feeling aggrieved by the same, the present petition has been preferred.

3. Counsel for the petitioner submits that the petitioner had preferred an appeal under Section 7-I of The Employees Provident Funds & Miscellaneous Provisions Act, 1952 challenging the order dated 20.03.2003 of the Regional Provident Fund Commissioner-II, Ranchi passed under Section 14-B of the EPF & Misc. Provisions Act,

1952. Counsel further submits that the said appeal was registered as appeal No. 492 (3)2003 and the petitioner had even filed its written submissions in support of the arguments. Counsel further submits that without there being any request or consent taken from the petitioner, the Ld. Appellate Tribunal had suo moto fixed the hearing of the said appeal at Kolkata. Counsel further submits that his authorized attorney, Sh. B.D. Shah, while on his visit to Delhi had fallen ill and remained under medical treatment from 12.07.2008 to 20.07.2008, and, therefore, could not attend the said hearing fixed at Kolkata. Counsel further submits that the appellant came to know about the fate of the said hearing only on 28.08.2008 and thereafter took steps to seek restoration of the appeal by filing an application on 03.09.2008. The hearing of the application was fixed by the Appellate Tribunal on 23.01.2010 at Bhubneshwar. The authorized representative of the petitioner appeared before the camp hearing of the Tribunal fixed at Bhubneshwar, but the application of the petitioner was dismissed on the ground that the same was filed beyond the prescribed period of limitation. Assailing both the orders, counsel for the petitioner submits that both the orders of the Ld. Tribunal are ex-facie illegal.

4. Mr. R.C. Chawla appears on advance notice. He submits that since the petitioner failed to file the restoration application within a period of 30 days as prescribed under Section 7-I of the Employees Provident Funds Act and, therefore, no illegality can be found in the order passed by the Tribunal.

5. I have heard counsel for the parties.

6. The statutory appeal was filed by the petitioner before the Appellate Tribunal thereby challenging the order dated 20.03.2003 passed by the Regional Provident Fund Commissioner-II, Ranchi. It is not in dispute that the Principal Bench of the Appellate Tribunal is located at Delhi and normally the hearing of the appeal should have taken place at Delhi alone. In any event of the matter, since the Tribunal, for the benefit of the litigants keeping in view the principle of 'access to justice at door step' fixed the hearings at various destinations and accordingly the said appeal filed by the petitioner was also fixed for hearing at Kolkata. Since the authorized representative of the petitioner could not appear at Kolkata, therefore, the said appeal filed by the petitioner was dismissed for non-prosecution. The petitioner sought restoration of its appeal by filing appropriate application before the Principal Bench of Tribunal

at Delhi but the said application of the petitioner was taken up by the Tribunal at Bhubneshwar and was dismissed as the same was found to be not maintainable having been filed after the prescribed period of limitation. So far the non-maintainability of the application filed by the petitioner is concerned, I do not find any fault in the impugned order as the Appellate Tribunal was bound by the period of limitation as prescribed under the Statute and the Rules framed thereunder. Since the petitioner has given sufficient explanation for the non-appearance of its authorized representative that during the relevant period he was on his visit to Delhi and had fallen ill, therefore, keeping in view the principles of natural justice, I set aside the impugned order dated 23.01.2010 and condone the delay in filing the said application by the petitioner and allow the said application of the petitioner seeking restoration of the appeal. Since the petitioner has already deposited the entire amount of damages at the time of filing the statutory appeal, it is therefore directed that the appellate Tribunal may hear the appeal filed by the petitioner on its merits.

7. Before parting with this order, this court would like to observe that many such matters are coming before this court where appeals filed by the various establishments are getting dismissed due to the

non-appearance of the petitioners or their counsels at the camp hearings. Undoubtedly, it is the prerogative of the Tribunal to fix such camp hearings, as the prime objective appears to be that hearing at such camps should be in proximity to the place of establishments of such petitioners. Yet, in all such cases the petitioner may require to engage another advocate practicing at the place or near to the place of camp hearing which would put unnecessary financial burden on such establishments. In the foregoing, this court is of the view that at least the consent of such petitioners in advance be taken by the Appellate Tribunal and camp hearings be fixed only in those cases where such establishments give their consent. In any event of the matter, the Appellate Tribunal is expected not to dismiss such appeals when taken up at such camp hearings as such orders will cause serious prejudice to the rights of the petitioners leading to avoidable financial burden.

8. With the above directions, the present petition is disposed of. The petitioner is directed to appear before the Tribunal at Delhi on 1.04.2010. Order Dasti.

March 02, 2010
pkv

KAILASH GAMBHIR,J