

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16097 of 2014

With

I.A. No.2422 of 2015

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St. Xaviers School, Mokama, through the Secretary of its Managing Committee Fr. Alwyn D'Souza S.J., son of late Denis D'Souza, Resident of St. Xavier's, West Gandhi Maidan, District- Patna, State of Bihar.

.... Petitioner/s

Versus

1. Employees Provident Fund Organization, through the Regional Provident Fund Commissioner, Bihar, Regional Office, Bhavishya Nidhi Bhavan, R-Block, Patna.
2. Assistant Provident Fund Commissioner (Compliance), Patna, Employees Provident Fund Organization, Regional Office, Bhavishya Nidhi Bhavan, R- Block, Patna-800001, Bihar.
3. Enforcement Officer, Muzaffarpur, Employees Provident Fund Organization, Regional Office, R-Block, Patna- 800001, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. K.M. Joseph

For the Respondent/s : Mr. Prashant Sinha

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

3 01-05-2015 Heard Mr. K.M. Joseph, learned counsel appearing on behalf of the petitioner and Mr. Prashant Sinha, learned counsel appearing for the Employees Provident Fund Organization.

In the nature of the order which this Court proposes to pass it is not required to discuss the merits of the issues involved in this writ petition. Suffice it to say that the appeal bearing A.T.A. No.1025(3) of 2005 preferred by the petitioner before the Employees Provident Fund Appellate Tribunal under section 7-I of the Employees Provident Fund and Miscellaneous



Provisions Act, 1952 (hereinafter referred to as 'the Act') questioning the order dated 19.9.2012 passed by the Assistant Provident Fund Commissioner in purported exercise of powers under section 7-A of 'the Act' has been dismissed for non-prosecution vide order passed on 11.6.2014, a copy of which is placed at Annexure-11 to the writ petition.

A very short argument has been made by Mr. Joseph to question the impugned order. He submits that by an order dated 11.2.2014 the Tribunal required the respondents to file their reply within four weeks and had posted the matter for such purpose on 11.6.2014 as is clearly reflected from the order placed at Annexure-10. It is submitted that even when the matter was posted on 11.6.2014 for filing of reply by the department but on a complete misconception of the position that the Tribunal treating the date fixed to be the date of hearing of the matter, has proceeded to dismiss the appeal in absence of any representation on behalf of the petitioner or his representative, even when the respondents yet had not filed their reply and the pleadings went uncontested.

Although Mr. Sinha appearing on behalf of the respondents submits that the remedy for the petitioner lies before the very Tribunal by filing a restoration application but



considering the circumstances which reflect from the order of the Tribunal present at Annexures 10 and 11 to the writ petition I am of the opinion that the petitioner has made out a case for interference. The submissions of Mr. Joseph is supported by the order of the Tribunal dated 11.2.2014 placed at Annexure-10 which requires the respondents to file their reply on 11.6.2014. The order passed on 11.6.2014 is placed at Annexure-11 and when the Tribunal has proceeded to observe that the matter was listed for hearing which is an error apparent on the face of record inasmuch as by the previous order dated 11.2.2014 the matter had been posted for filing response by the respondents. If the respondents did not choose to file reply then the pleadings made by the petitioner in appeal stood uncontroverted drawing in favour of the appellant. Even otherwise since the matter was fixed for filing of response by the respondents, either the matter should have been fixed for ex-parte hearing in absence of response by the respondents or for a final hearing but in no circumstance the Tribunal should have proceeded to dismiss the appeal when the date was fixed for filing of reply.

In the circumstances discussed the order impugned cannot be upheld and is accordingly set aside. The appeal of the petitioner stands restored to the file of the Tribunal for its

consideration and disposal on merits in accordance with law and considering that the matter is pending since 2012, an expeditious disposal preferably within a period of three months from the date of receipt/production of a copy of this order would be expected.

This writ petition is allowed. The interlocutory application stands disposed of.

(Jyoti Saran, J)

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