

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9499 of 2015

=====

M/s Anirudh Gas Seva through Kanchan Kumari Sinha W/o Late Asutosh Kumar Sinha Road No. 1, Rajendra Nagar , Police Station- Kadamkuan, District Patna.

.... Petitioner

Versus

1. The Assistant Provident Fund Commissioner , Employees Fund Organization , Regional Office, Patna, Bhavishya Nidhi Bhawan, R-Block , Road no. 6, Patna-800001
2. The Employees' Provident Fund Appellate Tribunal , Delhi.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Shrawan Kumar, Sr. Adv.
Mr. Dinesh Maharaj, Adv.
For the Respondent/s : Mr. Prashant Sinha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

3. 17-08-2015 Heard Sri Shrawan Kumar, learned senior counsel, who was assisted by Sri Dinesh Maharaj, learned counsel for the petitioner and Sri Prashant Sinha, learned counsel, who has appeared on behalf of respondent no. 1/Assistant Provident Fund Commissioner, Employees Provident Fund Organisation.

The petitioner, invoking writ jurisdiction of this Court under Article 226 & 227 of the Constitution of India, has prayed for quashing of an order dated 22-04-2015 passed in A.T.A. No. 368(3) of 2015 by the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi (hereinafter referred to as the 'Tribunal'), as contained in **Annexure – 9** to the writ petition and also for staying the operation of order dated 16-01-2015 passed by

the Assistant Provident Fund Commissioner, Patna under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act'), as contained in **Annexure – 8** to the writ petition.

The petitioner has mainly prayed for quashing of an interim order passed by the Employees Provident Fund Appellate Tribunal in A.T.A. No. 368(3) of 2015.

At the very outset, a preliminary objection was raised by Sri Prashant Sinha, learned counsel for the respondent no. 1 that against such order, writ petition may not be entertained.

Learned senior counsel for the petitioner submits that it is true that order impugned is an interim order, but fact remains that while exercising power under Article 226 & 227 of the Constitution of India, this Court has been empowered to interfere even against such interim order. He has placed reliance on an unreported judgment of Madras High Court in W.P. No. 9407 of 2012 and W.P. No. 1 of 2012. He submits that in similar circumstances the petitioner of the said writ petition was directed by the Tribunal to deposit 25% amount, as pre-deposit under Section 7-O of the Act. The Madras High Court, considering the objection, held that the writ court can be invoked against the interim order and the said writ petition was allowed. Learned



senior counsel for the petitioner has also placed reliance on **Annexure – 10** to the writ petition. He submits that in an identical situation, the Tribunal had allowed the appeal, in which, the vender of a gas agency was treated as employee under Section 7A of the Act. He submits that in the present case also the authorized officer has treated the vender of the petitioner as employee and passed order under Section 7A of the Act. On aforesaid ground, he has prayed for setting aside the order dated 22-04-2015 and has made a prayer for staying the operation of the order dated 16-01-2015 passed by the authorized officer under Section 7A of the Act.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Before delving into the matter, it would be appropriate to quote paragraph – 5 of the impugned order i.e. order dated 22-04-2015, which is as follows:-

“Heard. No justified grounds stated for waiver of entire pre-deposit amount. However, on the request of counsel for appellant, impugned order is stayed subject to deposit of 50% of the assessed amount with the respondent within 4 weeks. The respondent authority is directed not to take any coercive measure till the disposal of present appeal. Now come upon 21.07.2015 for filing reply of appeal, reply of application for condonation of delay and further proceedings.”

On perusal of the direction of the Tribunal, it is evident that learned counsel for the appellant before the Tribunal

had himself agreed for depositing 50% amount so that he may get order of stay. After obtaining order of stay, the petitioner has approached this Court for staying of the order passed by the Tribunal.

I do not find any ground to interfere with the order.

The writ petition stands dismissed.

(Rakesh Kumar, J.)

Anay

U			
---	--	--	--