IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2514 of 2013

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1. Indu Tapeshwar Singh Mahila Mahavidyalaya Vikramgaj, Rohtas
2. Dr. Ajoy Kumar Singh S/o Late Tapeshwar Singh Resident of Asni Bhawan, Boring Road, Patna-800 001, Secretary of the College

.... Petitioners

Versus

1. The Union of India Through The Regional Provident Fund Commissioner R' Block, Road No. 6, Patna
2. The Assistant Provident Fund Commissioner R' Block, Road No. 6, Patna- 1
3. The Recovery Officer Regional Provident Fund Commissioner Office, R' Block, Road No.-6, Patna-800 001
4. The Presiding Officer Employee Provident Fund Appellate Tribunal, Laxmi Nagar, Delhi

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr.Adv.
Mr. Satyendra Krishna Prasad, Adv.

For the Respondent/s : Mr. Prashant Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

8. 19-08-2015 Heard Sri Tej Bahadur Singh, learned senior counsel, who was assisted by Sri Satyendra Krishna Prasad, learned counsel for petitioners and Sri Prashant Sinha, learned counsel for the respondents/Employees Provident Fund Organisation.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for setting aside an order dated 17th October, 2012 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi (hereinafter referred to as the 'Appellate Tribunal') in A.T.A. No. 444(3) of 2010 (**Annexure – 1** to the writ petition).

By the said order, the learned Appellate Tribunal has dismissed the appeal as it considered barred by limitation.

Learned senior counsel for the petitioner, by way of referring to **Annexure – 5** to the writ petition i.e. order dated 5th August, 2010 passed in the same appeal i.e. A.T.A. No. 444(3) of 2010 by the Appellate Tribunal, submits that the petitioner's appeal was admitted on 5th August, 2010. At the time of admission, the Appellate Tribunal directed the petitioner (appellant) to deposit 40% of the assessed amount, as per order passed under Section 7A to the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act') and operation of impugned order was stayed, subject to deposit of the said amount. He submits that once the appeal was admitted by the Appellate Tribunal and thereafter, the petitioner deposited 40% of the assessed amount, at subsequent stage, same authority i.e. Appellate Tribunal was not having any jurisdiction to review/recall its earlier order. It has been argued that the Appellate Tribunal by its order dated 17-10-2012 has acted as an appellate authority against the same authority i.e. Appellate Tribunal. It has further been argued that once the appeal was admitted, at the time of hearing, there was no ground for rejecting the appeal on the ground of limitation. On aforesaid ground, submission has been made that order impugned is without jurisdiction and contrary to the settled principle of law.

Sri Prashant Sinha, learned counsel for the respondent/EPFO tried to persuade the Court regarding the chequered history of the case and submitted that one way or the other, the petitioner is trying to avoid the liability. However, he was not in a position to satisfy the Court as to whether in the Act, there is any such power to review/recall of the order passed by the same authority.

In view of the facts and circumstances, particularly; the fact that the Appellate Tribunal has grossly erred in reviewing its own order and the fact that after the appeal was admitted, at the time of hearing, he had considered the limitation matter and dismissed the appeal, the Court is left with no option but to set aside the impugned order.

Accordingly, the order dated 17th October, 2012 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi in A.T.A. No. 444(3) of 2010 is, hereby, set aside and the matter is remitted back to the Appellate Tribunal to decide the appeal on its own merit without being prejudiced with this order.

Keeping in view the fact that the order under Section

7A of the Act was passed long back, it is desirable to observe that the learned Appellate Tribunal may take appropriate step so that the appeal may be finally adjudicated on its merit, preferably; within a period of three months from the date of receipt/production of a copy of this order.

The writ petition stands allowed with above observation.

(Rakesh Kumar, J.)

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