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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

CIVIL WRIT PETITION NO. 2220 OF 2015

The Provident Fund Commissioner. ... Petitioner.

V/s.

M/s. Bena Garments. ... Respondent.

Ms. Sangeeta Yadav i/b. Suresh Kumar for the Petitioner.

Mr. M.D. Nagle i/b. P.V. Satam for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 24 AUGUST, 2015.

ORAL JUDGMENT :-

By order dated 19 August 2015 parties were put to notice that the Petition will disposed off finally at the admission stage. Accordingly, Rule. Rule made returnable forthwith. Respondent waives service.

2. The Respondent had filed an Appeal in the Employees' Provident Fund, Appellate Tribunal, New Delhi challenging the order dated 24 June 2011 passed by the Provident Fund Commissioner, Mumbai under Section 7A of Employees' Provident Fund Act. One of the ground of challenge by the Respondent

before the Appellate Authority was that the copy of the Enforcement Officer's report was not supplied to the Respondent. The Appellate Tribunal accepted this grievance and held non-supply of Enforcement Officer's Report before passing an order was a serious infirmity and it amounted denial of principles of natural justice. Accordingly, the Appellate Tribunal, by order dated 11 October 2013, allowed the Appeal and set aside the order passed by the Provident Fund Commissioner on 24 June 2011.

3. Though nothing is shown by the learned Counsel for the Petitioner to assail the feeling that there was breach of principles of natural justice, the Appellate Tribunal has adopted a course which is not as per law. If the Appellate Tribunal was of the opinion that non-supply of copy of Enforcement Officer's Report vitiated the order of the Provident Fund Commissioner, then a direction could have been given to supply the report and thereafter, to hear the matter afresh. The Appellate Tribunal has not interfered with the impugned order on merits but only on the ground of non-supply of the report.

4. The Appellate Tribunal has closed the further inquiry as to the liability of the Respondent to pay the Provident Fund dues. The approach adopted by the Appellate Tribunal is against the spirit of the act which is enacted to ensure that certain benefits are given to the workmen. By closing the inquiry on merits the rights of the workmen are seriously affected. Such course of

action cannot be permitted to stand. The learned Counsel for the Petitioner is therefore justified in contending that the order passed by the Appellate Tribunal should be modified and the proceedings should not be allowed to be closed.

5. Accordingly, the order passed by the Appellate Tribunal on 11 October 2013 is modified as follows :-

- (I) The order passed by the Provident Fund Commissioner, Mumbai dated 24 June 2011 is set aside.
- (II) The Petitioner shall supply the copy of the Enforcement Officer's report to the Respondent within period of four weeks from today.
- (III) The proceedings before the Provident Fund Commissioner, Mumbai under Section 7A of the Act shall stand restored as regard the Respondent.
- (IV) The Respondent shall remain present in the Office of the Assistant Provident Fund Commissioner, Mumbai on 28 September 2015 at 11.00 a.m. thereupon the

Commissioner will give further dates of hearing in the matter.

(V) The proceedings before the Assistant Provident Fund Commissioner will be disposed off on their own merits, all contentions are kept open.

(VI) The Assistant Provident Fund Commissioner, Mumbai shall make an endeavour to dispose off the proceedings within period of twelve weeks from the date the parties appear before it, if there are no earlier time bound commitment.

Rule made absolute in above terms. No order as to costs.

(N.M. JAMDAR, J.)