

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 8315 of 2011 (L)

PETITIONER(S):

M/S POMSY FOOD PRODUCTS (P) LTD.,
K.S.PURAM, VAVVAKKAVU P.O., KOLLAM REPRESENTED BY
ITS MANAGING DIRECTOR.

BY ADVS. SMT. A.K. PREETHA
SRI. ANIL NARAYANAN

RESPONDENT(S):

1. EMPLOYEES PROVIDENT FUND APPELLATE
TRIBUNAL, CORE-2, 4TH FLOOR
SCOPE MINAR, LAXMI NAGAR, NEW DELHI 1100092.
2. EMPLOYEES PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, MANNANNIA COMPLEX, ANDAMUKKOM
KOLLAM REPRESENTED BY THE REGIONAL
PROVIDENT FUND COMMISSIONER- 691001.
3. ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION
SUB REGIONAL OFFICE, OLD MUNICIPAL OFFICE, BUILDING
KOLLAM-691001.

BY ADV. SRI. PIRAPPANCODE V.S. SUDHIR, SC, EPF ORGN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 8315 of 2011 (L)

APPENDIX

EXHIBITS

P1- TRUE COPY OF THE ORDER NO. KR/16695/Enf.I(4)/2010 DATED 19.7.2010
ISSUED BY R2

P2- TRUE COPY OF THE APPEAL FILED BY THE PETITIONER AS ATA 28(7) 2011

P3- TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WP(C).
32067 OF 2010 DATED 24.1.2011

P4- TRUE COPY OF THE ORDER PASSED BY R1 DATED 25.1.2011 IN ATA 28(7)2011

//True Copy//

P.S. To Judge

K.VINOD CHANDRAN, J

W.P.(C).No. 8315 of 2011

Dated 12th March, 2015

JUDGMENT

The petitioner is aggrieved with Ext.P1 order as confirmed by the Appellate Tribunal in Ext.P4. The petitioner admittedly is an establishment covered under the Employees Provident fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act). Section 7A proceedings were initiated for the reason that, certain contract employees were not covered under the enactment for the period from 4/2008 to 8/2009. There was also an allegation that the conveyance allowance and food reimbursement allowance for the very same period was liable to be treated as wages for which contributions were not deducted and paid.

2. The petitioner filed an appeal from Ext.P1 order which resulted in the Appellate

Authority dismissing the same on the ground of delay. The learned counsel for the petitioner would contend that the averments in the writ petition goes to the root of the matter and this Court should extend its jurisdiction under Article 226 of the Constitution of India to examine the same.

3. At the outset it is to be noticed that, when a Statute prescribes a period for filing an appeal and also prescribes a period in which, the delay occasioned could be condoned, then it would not be proper for this Court to extend the period under Article 226 of the Constitution of India. The provisions of Section 5 of the Limitation Act also would not be so applicable. The issue is covered by Assistant Commissioner of Central Excise v. Krishnapoduval (2005 (4) KLT 947), Panopharam v. Union of India (2010 (3) KLT 149) and State of Madhya Pradesh and Another v. Anshuman Shukla (2014 (10) SCC

812). In such circumstances, this Court would not consider the aspect of delay since the appellate remedy was not invoked at the appropriate time.

4. As to the challenge against Ext.P1 under Article 226 of the Constitution of India, again it has to be noticed that only on the appeal having been rejected, that too for delay, the petitioner turns around with a challenge under Article 226 of the Constitution of India. Further, as regards the contention against Ext.P10, with respect to the coverage not being required for contract employees and the inclusion of conveyance allowance and food reimbursement allowance, these are not issues which could be considered under Article 226. Those contentions do not raise a fundamental aspect of jurisdictional error or violation of principles of natural justice. For all the above reasons, the writ petition is not

maintainable.

5. However, considering the impecunious circumstances, the petitioner shall be given ten monthly instalments for clearing the dues, for which the petitioner shall be issued with a notice intimating the amounts due as on 31.03.2015, after deducting the amounts paid as per the interim order, within two weeks from today. The 1st instalment shall be paid on or before 13.04.2015 and thereafter; the due date of instalments falling on the 13th of each succeeding month. If default is committed in two consecutive instalments, the respondents are entitled to proceed against the petitioner.

The writ petition stands disposed of, leaving the parties to suffer their respective costs.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs