

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 10795 of 2009 (T)

PETITIONER:

THE REGIONAL PROVIDENT FUND COMMISSIONER
EMPLOYEES' PROVIDENT FUND ORGANISATION
SUB REGIONAL OFFICE, CHALAKUZH Building
KOTTAYAM

BY ADVS.SRI.N.N. SUGUNAPALAN, SC, P.F.
SMT.T.N.GIRIJA, SC,EPF ORGANISATION

RESPONDENTS:

1. TALAYAR TEA COMPANY LTD
10, DAMU NAGAR, PULIAKULAM
TAMIL NADU REPRESENTED BY
2. THE EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL
SKYLARK BUILDING, BEHRU PLACE
NEW DELHI REPRESENTED BY ITS SENIOR MANAGER

R1 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R1 BY ADV. SRI.P.GOPINATH
R1 BY ADV. SRI.P.BENNY THOMAS
R1 BY ADV. SRI.K.JOHN MATHAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 10795 of 2009 (T)

APPENDIX

EXT.P1: TRUE COPY OF THE ORDER NO.KR/KTM/51/P.D/ENF.I(6)/2001/16985 DATED 26.12.2001
ISSUED BY THE PETITIONER

EXT.P2: TRUE COPY OF THE APPELLATE ORDER DATED 28.01.2002 IN ATA 49(7)/2002

EXT.P3: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST PETITIONER IN APPEAL
ATA 49(7)/2002 ON THE FILES OF THE APPELLATE TRIBUNAL

EXT.P4: TRUE COPY OF THE REPLY FILED BY THE PETITIONER IN ANSWER TO THE
CONTENTION IN THE APPEAL ATA 49(7)/2002 ON THE FILES OF THE APPELLATE TRIBUNAL

EXT.P5: TRUE COPY OF THE LAWYER NOTICE SENT BY THE 1ST RESPONDENT TO THE
PETITIONER ON 13.02.2002

EXT.P6: TRUE COPY OF THE JUDGMENT IN OP NO.12662 OF 2002 DT 10.05.2002 OF THIS HON BLE
COURT

EXT.P7: TRUE COPY OF THE NOTICE DT 5.9.2005 FROM THE APPELLATE TRBUNAL

EXT.P8: TRUE COPY OF THE LETTER DATED 7.11.2005 SENT BY THE PETITIONERS OFFICE TO THE
ADVOCATE

EXT.P9: TRUE COPY OF THE LETTER DT 9.11.2005 SENT BY THE 1ST RESPONDENT TO THE
REGISTRAR OF APPELLATE TRIBUNAL WITH COPY TO THE PETITIONER

EXT.P10: TRUE COPY OF THE ORDER DT 11.7.2002 OF THE APPELLATE TRIBUNAL IN ATA 49(7)/
2002

EXT.P11: TRUE COPY OF THE LETTER NO.KR/KTM/51/ENF. I(7)/ 05/5361 DATED 2.12.2005 SENT BY
THE PETITIONER TO THE ADVOCATE FOR THE EPF ORGANISATION

EXT.P12: TRUE COPY OF THE LETTER NO KR/KTM/51/ENF.I(7)/06/1510 DATED 3.05.2006 SENT TO
THE LAWYER

EXT.P13: TRUE COPY OF THE LETTER NO KR/KTM/51/ENF.I(4)/PD/2007/21137 DATED 22.03.2007
SENT BY THE PETITIONER TO THE REGISTRAR OF THE EPF APPELLATE TRIBUNAL

EXT.P14: TRUE COPY OF THE LETTER NO KR/KTM/51/PD/ENF.I(3)/2007/12964 DATED 13.12.2007
SENT BY THE PETITIONER TO THE REGISTRAR OF THE EPF APPELLATE TRIBUNAL.

RESPONDENTS EXHIBITS; NIL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No.10795 of 2009

Dated this the 18th day of March, 2015

J U D G M E N T

The Regional Provident Fund Commissioner, the petitioner is aggrieved by Ext.P10 order of the Appellate Tribunal which according to the petitioner has been passed without notice. This Court is not inclined to prima facie accept that contention, since a reading of the order would indicate that the respondent therein the Regional Provident Fund Commissioner, Kottayam had filed their objections. It was also noticed by the Tribunal that the Organisation has in its reply merely stated that the order levying damages were issued from time to time. Neither the specifics have been given nor were such orders filed.

2. In any event, the impugned order in the

appeal was for the period 3/94 to 10/96 when for delay in remittance of contributions under Section 14B, damages was imposed. The averments in the writ petition clearly indicate that the respondent organisation had received notice of the appeal filed and the respondent Organisation had also engaged its Standing Counsel with respect to the above matter .

3. The specific contention of the Employees Provident Fund Organisation is that by Ext.P7 notice in ATA 49(7)/02, which is the appeal filed by the assessee against Ext.P1 order, hearing was fixed on 11.11.2004 and the matter was taken up with the Standing Counsel. The Standing Counsel had informed the petitioner herein, by Ext.P8, that already a counter affidavit was placed on record on 19.02.2002. However, later, the respondent organisation was informed that Ext.P10 order was passed on 11.11.2002. The specific contention raised

is that RPFC, the petitioner herein did not have notice of the proceedings.

4. Definitely a counter affidavit was filed by the petitioner herein, through the Standing Counsel on 19.02.2002, which is evidenced by Ext.P8. The fact that the subsequent notice was issued by Ext.P7 in an appeal which was disposed of on, 2002, does not at all commend interference in Ext.P10. In fact on notice being issued to the assessee by the EPF Appellate Tribunal, the assessee had replied by Ext.P9 clarifying that the matter was disposed of as early as on 11.07.2002. Hence Ext.P7 can only be said to be an error committed by the Registry of the Appellate Tribunal.

5. Coming to the disposal as of 2002 it is evident that even before the disposal, the matter was entrusted by the respondent Organisation to the Standing Counsel who appeared for the respondent

organisation before the Tribunal and through whom the counter affidavit was also filed. The communication issued by the next incumbent Standing Counsel of the respondent Organisation at Ext.P8 indicates that the counter affidavit was filed by the earlier Standing Counsel. Hence it cannot be said that at every point notice has to be issued to the respondent organisation, especially when the organisation is represented by a Standing Counsel before the Appellate Tribunal. It is also to be noticed that the Tribunal has its regular sitting at New Delhi and there would definitely be a diary maintained showing the posting dates of the cases on each date.

6. Further on the disposal of the matter, the order would definitely have been served on the Organisation which should have taken up the remedy against such order at the appropriate time. Even Ext.P7 notice is dated 05.09.2005. The present writ

petition was filed on 25.02.2009. The notice issued by Ext.P7 was for appearance on 11.11.2005 and the Standing Counsel also has indicated the same. Hence at least on 11.11.2005, definitely the respondent Organisation would have come to know of the disposal of the appeal in the year 2002. When it came to the notice of the respondent that the matter was disposed in the year 2002; at least in the year 2005, immediately a writ petition should have been filed.

7. The contention of the Organisation is that it is taken up before the Registry of the EPF appellate Tribunal. When an order is issued by the Appellate Tribunal, the Registry has absolutely nothing to do in the matter and it was incumbent upon the respondent Organisation to invoke immediately the remedy under Article 226. Having not done that and having waited for another four

years, to file the writ petition, this Court is of the opinion that no indulgence can be shown to the respondent Organisation merely for the reason that it is an organisation under the Central Government. True the organisation protects the welfare of the workman and definitely has to be given a leeway but that cannot extend to condoning delay of almost seven years from the date of disposal in the year 2002. In such circumstance, there is no reason why any interference has to be caused.

Writ petition is dismissed. No costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

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//true copy//

P.A to Judge