

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 11944 of 2010 (P)

PETITIONER

**M/S.CANNANORE CO-OPERATIVE SPINNING
MILLS LTD., P.B.NO.2005, CHOVA
KANNUR - 670 006
REPRESENTED BY ITS
MANAGING DIRECTOR, M.C.SANKARAN.**

**BY ADVS.SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH MENON
SRI.V.J.ANAND**

RESPONDENT(S):

**1. EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL,
SCOPE MINAR, CORE II
4TH FLOOR, LAXMI NAGAR DISTRICT CENTRE, LAXMI NAGAR
NEW DELHI - 110 092.**

**2. THE ASST.PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANIZATION
SUB REGIONAL OFFICE, P.B.NO.117, KANNUR - 670 001.**

**R,R2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC,
EMPLOYEES PROVIDENT FUND ORGANIZATIONP.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS

- | | |
|---------------|---|
| EXT.P1 | COPY OF THE ORDER OF THE 2ND RESPONDENT DATED
12-10-2001 |
| EXT.P2 | COPY OF THE APPEAL PETITION ATA NO.712(7)/2003
(WITHOUT ITS ANNEXURES) AND PETITION TO
CONDONE THE DELAY AND AFFIDAVIT DATED 26-9-2003 |
| EXT.P3 | COPY OF THE ORDER OF THE TRIBUNAL DATED
23-12-2009 IN ATANO.712(7)/2003 (WRONGLY SHOWN AS
ATA NO.712(7)/2005) |

RESPONDENTS EXHIBITS

NIL

TRUE COPY

P.A TO JUDGE

SMM

K. VINOD CHANDRAN, J.

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W.P.(C) No. 11944 of 2010

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Dated this the 19th day of February, 2015

J U D G M E N T

The petitioner is aggrieved with the dismissal of the appeal filed on the ground of delay occasioned. The impugned order is Ext.P3, which dismissed the appeal filed by the petitioner for reason only of the delay caused. The issue that was raised in the appeal was with respect to the imposition of damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity 'the Act'). The levy of damages was made by Ext.P1 dated 12-10-2001. As provided in the statute, the petitioner had time of 60 days to file an appeal and a further period of 60 days to file such appeal with an application for condonation of delay. Admittedly, the petitioner's appeal was beyond the 120 days as provided in the statute. This Court has in **Assistant Commissioner of Central Excise v. Krishna Poduval [2005 (4) KLT 947]** and **Sohams Fouondations Engineering Pvt. Ltd. (M/s) v. Union of India and another [2012(1) KHC 849]** declared

that Article 226 cannot be invoked in cases where statute provides specifically for delay condonation, in which event Section 5 of the Limitation Act, 1963, has no application.

2. In such circumstance, the impugned order cannot be interfered with under Article 226 of the Constitution of India. The learned Counsel appearing for the petitioner would however contend that the principles on which Section 14 B has to be levied, as declared by another Division Bench of this Court in **Regional Provident Fund Commissioner v. Harrisons Malayalam Ltd.** in **[2013(3) KLT 790]**, has to be applied in the above case and hence de hors dismissal of the appeal, this Court could invoke its extra ordinary jurisdiction under Article 226. It is to be specifically noticed that the petitioner had an appellate remedy and it is not as if the petitioner diligently within the time stipulated, approached this Court under Article 226.

3. The petitioner failed to file an appeal within the time provided under the statute and having suffered an

order of dismissal on the issue of delay; has turned around to approach this Court under Article 226. Article 226 cannot be invoked to rectify follies of litigants. However, the petitioner shall be granted six monthly instalments to pay off the balance amounts. The respondent shall issue a statement showing the amounts due as on 28-02-2015 after adjusting the amounts paid as per the interim order in the above Writ Petition. The same shall be satisfied in six monthly instalments starting from 19-03-2015 and followed up on the 19th of every succeeding months.

The Writ Petition is disposed of.

**K. VINOD CHANDRAN,
JUDGE**

smm