

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 11797 of 2011 (Y)

PETITIONER:

**S.KESAVADAS, PROPRIETOR,
M/S.LATHA CASHEWS, MATURHOORKULANGARA SOUTH
ALUMKADAVU P.O., KARUNAGAPPALLY, KOLLAM.**

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

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 ASSISTANT PROVIDENT FUND
COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANIZATION,
SUB REGIONAL OFFICE, OLD MUNICIPAL BUILDING
CHINNAKKADA, KOLLAM-691 001.**

BY ADV SRI.V.V.SURESH,SC,EMPLOYEES PROVIDENT FUND ORGANISATION

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE NOTICE DATED 20.06.2008 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT P2: TRUE COPY OF THE ORDER DATED 10.06.2009 PASSED BY THE 2ND RESPONDENT

EXHIBIT P3: TRUE COPY OF THE APPEAL PETITION (WITHOUT ITS ENCLOSURES) DATED 09.12.2009 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT (A.T.A NO.853(7) 2009)

EXHIBIT P4: TRUE COPY OF THE ORDER DATED 14.01.2011 IN ATA.NO.853(7) 2009 PASSED BY THE FIRST RESPONDENT

EXHIBIT P5: TRUE COPY OF THE ORDER DATED 11.03.2011 PASSED BY THE FIRST RESPONDENT TRIBUNAL IN THE REVIEW PETITION FILED BY THE PETITIONER IN ATA.NO.853(7) 2009

RESPONDENT'S EXHIBITS : NIL

// TRUE COPY

PA. TO JUDGE

iap

K.Vinod Chandran, J.

W.P.(C).No.11797 of 2011-Y

Dated this the 14th day of January, 2015

JUDGMENT

The petitioner is aggrieved with Exhibit P2 order under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [for brevity "EPF Act"], which has been confirmed by Exhibit P4 in appeal, which was passed *ex parte* without the appearance of the appellant. A review filed was also rejected as per Exhibit P5.

2. I have heard the learned counsel for the petitioner as also the Standing Counsel appearing for the respondent-Organisation. The learned Standing Counsel for the respondent-Organisation submits that, the petitioner had not diligently prosecuted the matter either before the original authority or before the appellate authority and, hence, the petitioner's contentions were not taken into account.

3. A reading of Exhibit P2 would indicate that the petitioner had been appearing before the authority who had issued notice under Section 7A of the EPF Act. On 19.05.2009

when the matter was posted, there was no appearance and there was on record an application requesting for an adjournment. Without considering the application for adjournment, the officer went ahead with the enquiry and verified the wage registers and got a report from the Enforcement Officer and passed an order at Exhibit P2 on 03.06.2009.

4. The petitioner had availed of the statutory remedy, by filing an appeal, which was dismissed, as evidenced by Exhibit P4 dated 14.01.2011. The appeal was posted at the camp sitting at Thiruvananthapuram. The petitioner contends that the petitioner did not receive any notice and it was only in such circumstance that the petitioner could not appear. The petitioner had immediately thereafter filed a review, seeking to review the order dated 14.01.2011 of the appellate authority, which was also rejected by Exhibit P5 dated 11.03.2011.

5. Looking at the totality of circumstances, especially the fact that despite the non-appearance of the petitioner, none of the documents produced earlier by the petitioner were looked into by the assessing authority, it is only proper that the matter

be considered afresh. Exhibits P2, P4 and P5 hence would stand set aside. The petitioner or his authorised representative shall appear before the 2nd respondent on or before 30.01.2015. The petitioner shall also produce the documents which he intends to rely on, before the authority before the said date. On appearance, the 2nd respondent shall issue a notice of the date of hearing, with acknowledgment taken from the petitioner or his authorised representative, and shall proceed with the hearing of the case on the said or adjourned date and shall conclude the proceedings at any rate, within three months from the date of appearance of the petitioner.

The writ petition is disposed of as above. No costs.

Sd/-

K.Vinod Chandran
Judge

vkul/-

(true copy)