

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.1011 of 2012
Date of Decision: 05.02.2015**

Evergreen Sr. Secondary School

..... Petitioner

Versus

Presiding Officer, Employees Provident
Fund, Appellate Tribunal, New Delhi
and another

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vivek Salathia, Advocate,
for the petitioner.

Mr. Rajesh Hooda, Advocate,
for respondent No.2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

Learned counsel for the respondent-Organization submits that there were two periods involved in this case with respect to assessment. The first period was from September 2004 to March 2005 which suffered an order under Section 7-A of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 [for short 'the Act'] against which the petitioner is in appeal before the Employees' Provident Fund Appellate Tribunal, New Delhi. Further proceedings against the School are stated to have been stayed in the pending appeal. The second period of assessment

involves April 2005 to August 2009 which also has suffered an order under Section 7-A of the Act but which has not been appealed against by the Petitioner-School and is presently final.

For the latter period supra proceedings under Section 14-B of the Act was taken out by the Organization to quantify damages which has led to the passing of the impugned order against which the present petition has been filed. The order under Section 14-B was passed on May 12, 2011. The petitioner had entered appearance and contested the case but for several dates including the day when the final order was passed, the school-Management was not present in person or through its representative or through counsel.

Learned counsel for the petitioner admits that the impugned order came to the knowledge of the school on June 02, 2011 and the appeal was filed on September 23, 2011 against it. The procedure for filing appeals is laid down in Rule 7 of the Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997 which lays down that any person aggrieved by a notification or an order passed by the Central Government under the Act can be appealed against within 60 days from the date of issue of the notification/order, and prefer an appeal to the Tribunal. The first proviso to Rule 7 gives a latitude to the Tribunal in cases where sufficient cause is shown which prevented party to prefer an appeal within the prescribed period, and to that extent, if it is satisfied, the period of limitation by a further period of 60 days can be accommodated statutorily with reasonable explanation for the delay in approaching the Tribunal.

There can be no doubt that from the date of knowledge both the

periods have expired, in the first and the second leg. The moot question is from what point limitation would run in this case.

Learned counsel for the petitioner submits that limitation should run from the date of knowledge of the order i.e. June 02, 2011 while the other side contest the assertion on the rule position and submits that limitation can only run from the date of order i.e. May 12, 2011 especially when the petitioner-School was not ex parte but refrained from appearing on five or six dates during the proceedings including the one on May 12, 2011 when the final order was passed. They would, therefore, have constructive knowledge of the proceedings and the order passed thereon had they exercised due diligence in alertly pursuing their legal remedies.

I would accept the reasoning of the learned counsel for the Organization as one which is consistent with Rule 7. Even though Rule 7 is placed in the procedural part of the scheme framed under the Act but it would in my opinion be read as a substantive provision suffering procedural limitations prescribed within the rule with no further latitude or discretion except within the period prescribed in the the second leg of the prescribed time. It is well settled that where the result of expiry of limitation beyond the last date fixed is not prescribed then a construction needs to be placed which is strict and here no equity would come into play when limitations to do acts or things have expired, for example, just as in civil suits; in proceedings under Section 34 of the Arbitration & Conciliation Act, 1996 and limitations placed in the erstwhile Punjab General Sales Tax Act, 1948 to STCs etc.

To make matters worse for the petitioner, sufficient cause was not

shown before the Tribunal which prevented the filing of the appeal within time and the application made at first and last sight does not qualify as satisfying any of the tests of sufficient cause of which the learned counsel for the petitioner had to frankly admit in Court on persistent queries put to him, that it is not a happily worded application for condoning the delay in appealing. Even corrective jurisdiction of such an application has run out its length and no helpful prayer has been made in this petition for grant of the limited relief of re-appraisal of sufficient cause, as none exist.

The argument of learned counsel for the petitioner that there was a stay of proceedings for the first assessment period should impact the subsequent assessment period will be of no help even though the question may be of one eligibility and coverability under the Act. Each assessment year is independent and recourse to proceedings under Section 7-A and 14-B of the Act remain independent within each period of assessment and, therefore, the interim stay granted in appeal can have no bearing on the subsequent period against which no appeal was filed. If the subsequent assessment year has become final qua the school under Section 7-A then it matters little as to what was the status prior to that period as that would remain covered, in any rate, by the subsequent period and in the future. It is also well settled in the EPF law that once an establishment is covered it remains covered despite reduction of its labour force from 20 employees which are required to bring an establishment within the fold of the Act.

Therefore, no valid and cogent ground is made out to interfere in the matter in exercise of supervisory and discretionary jurisdiction to avail remedy provided under Article 226 & 227 of the Constitution.

Resultantly, the petition is dismissed, however, without any order
as to costs.

(RAJIV NARAIN RAINA)
JUDGE

05.02.2015
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