

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No.21172 of 2015

Date of decision: 5.10.2015

Dr.B.R.Ambedkar National Institute of Technology

... Petitioner

Versus

Employee's Provident Fund Department and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

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

RAJIV NARAIN RAINA, J. (Oral)

The blunder committed by the Employee's Provident Fund Appellate Tribunal, New Delhi is so patent that it cannot be regarded as safe to leave it alone by any process of reasoning. On 25.11.2014, the Appellate Tribunal admitted the appeal for consideration against the order of the Assistant Provident Fund Commissioner. The operation of the impugned order was not only stayed but the EPF Organization was directed not to take any coercive measures against the petitioner establishment till the disposal of the appeal. The matter was adjourned to 21.4.2015. There was failure of the appellant, the petitioning Institute to cause appearance on 21.4.2015 on account of noting of wrong date by the authorized representative/counsel. On 21.4.2015, on account of non-appearance, the appeal was dismissed in default.

2. Dr.B.R.Ambedkar National Institute of Technology, Jalandhar preferred an application for restoration of the appeal before the appellate authority on the grounds mentioned in the application and that the default was neither willful nor intentional and had occurred only due to recording of a wrong date. Instead of restoring the appeal, the Tribunal has dismissed the application for restoration of the appeal putting an end to the matter. The appellate Tribunal must remember that it is sitting virtually in first appeal and all questions of law and fact are open to be decided by it and thus the duty is sacrosanct since valuable rights of parties rest on the determination.

3. The appellant was not a fly-by-night-operator who had procured a stay order by deceit and would hide thereafter or run away with money. I say with great trepidation that the Appellate Tribunal has caused a serious miscarriage of justice in dismissing the application for restoration of the appeal. A tribunal must at all times act with equanimity and always proportionate to the cause and not display knee jerk reactions which appear to show angst. This would erode faith in the institution if such like orders are passed. Look at the swing and reach of the interim stay order passed five months before the case was made to fall flat. If this Court does not intervene in this case, a grave injury would most certainly result to the appellant which cannot be compensated in any manner, firstly, because the case will be not heard on merits and secondly, the petitioning NIT would be exposed suddenly to penalty proceedings and criminal procedures involved in the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 without just cause or legal justification. The impugned order cannot be sustained and is liable to be set aside.

4. The Organization which is the respondent need not be heard in the passing of this order and therefore no notice is issued to it as the *lis* is between the appellant and the organization of which the Presiding Officer is the Appellate Tribunal constituted under the same Act. If the parties are unable to secure justice from the appellate Tribunal and such orders are to be passed then it deserves to be wound up or refurbished with talented persons to man appellate office to justify its existence. Bad orders add to the burgeoning demands on this Court. It is these kind of orders as seen in this case which are raising the pitch against tribunalization of justice, the tryst with which bears on all sides rather unsatisfactory results. The Tribunal was dealing with a premier technical institution of the region and some respect must be had to education and that too in the name of the founding father of the Constitution of India.

5. For the foregoing reasons, this petition is allowed and the impugned order dated 8.9.2015 is quashed. The appeal is restored to its original number on the board of the Tribunal. The interim orders are restored as well. The appellate Tribunal would now proceed to decide the appeal on merits.

Parties to appear before the Appellate Tribunal on 20.10.2015.

(RAJIV NARAIN RAINA)
JUDGE

October 5, 2015

Paritosh Kumar