IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP no. 7680 of 2013(O&M)
Date of Decision : 29.01.2015

M/s Usha Fabs

....Petitioners

Versus

The Presiding Officer, Employees Provident Funds Appellate Tribunal Delhi and another

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1)Whether reporters of local newspapers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

Present : Mr. S.C.Duggal, and
Ms. Koplin Kaur Kandhari, Advocates for the petitioner

None for respondent no.2

MAHESH GROVER, J.

There is no representation on behalf of respondent no.2.

The petitioner impugns the orders dated 14.6.2011 and 17.8.2011. The petitioner is engaged in the manufacturing and export of readymade garments and is covered under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act').

Proceedings under Section 7A of the Act were initiated against the petitioner leading to the passing of an order on 10.7.2009. The petitioner contended that this order of the Assistant Provident Fund Commissioner under Section 7A of the Act was passed in complete defiance of the provisions of the Act and rules framed thereunder and thus filed a review petition by styling it under Section 7B of the Act. This review petition was dismissed on 3.2.2010 against which the petitioner preferred an appeal before the Tribunal.

The appeal was admitted to hearing vide orders of the Tribunal dated 9.4.2010. On one of the dates fixed for hearing i.e. 8.3.2011 the petitioner stated before the Tribunal that the entire amount pursuant to the impugned order under Section 7A of the Act stood deposited. The matter was adjourned to 13.5.2011 to enable the respondents therein to file a reply.

This date was misconstrued by the petitioner to be 30th May instead of 13th May leading to a default in appearance as a result of which the order dated 14.6.2011 was passed dismissing the appeal filed by the petitioner. Review/recall of the order prayed for by the petitioner was also rejected by the order dated 17.8.2011. These orders now form a part of the grievance of the petitioner who states that since the entire process has been determined without giving him an effective hearing this has resulted in acute prejudice to his cause.

On due consideration of the matter, I am of the view that the petitioner's grievance has been lost to the process of hyper technicalities adopted by the Tribunal. When the matter was being processed before the Tribunal after admission, the respondents were given time to file a reply and it is for this purpose that the case was adjourned to 13.5.2011 and on this date in accordance with the provisions of the Act the Tribunal had two options of either to reserve the issues for orders or to dismiss in default. It is pertinent to mention here that respondent – corporation never filed any reply till that date of hearing and neither did they plead waiver. Ordinarily the Tribunal should have recorded this fact that the Corporation does not wish to file a reply and then adjourn the matter for further proceedings on which date the Court could have reserved the issues for orders.

In any case this Court does not wish to control the process of the Tribunal by making observations which may tie it down in future. Suffice it to say that the aforesaid fact has been noticed only to bring home the point of prejudice caused to the petitioner on account of his being deprived of an effective hearing.

The impugned orders would show that the grievance of the petitioner as directed against the orders of the Assistant Provident Commissioner under Section 7A of the Act stood largely ignored. Prudence would have required the Tribunal to appreciate the grievance of the petitioner which centred around the non-compliance of the procedure mandated by law prior to the passing of order under Section 7A as also to notice that the liability determined under the Act stood satisfied thereby safeguarding the interest of the Corporation. This ordinarily should have been a sufficient cause for the Tribunal to decide on merits once the financial aspect of the Corporation stood safeguarded. In the considered view of this Court the Tribunal went wrong in adopting a mechanical approach to discard the case of the petitioner without giving him an effective opportunity of hearing.

For the aforesaid reasons, instant petition is accepted and the impugned orders are set aside. Matter is remanded back to the Tribunal to decide the matter afresh by giving an opportunity of hearing to the parties.

January 29, 2015 (MAHESH GROVER)
rekha JUDGE