

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

LPA No. 1071 of 2015 (O&M)

DATE OF DECISION : 04.09.2015

The Assistant Provident Fund Commissioner

.... APPELLANT

Versus

Employees Provident Fund Appellate Tribunal and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Sanjay Tangri, Advocate,
for the appellant.

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SATISH KUMAR MITTAL, J.

The Assistant Provident Fund Commissioner has filed this intra-court appeal under Clause X of the Letters Patent against the order dated 13.02.2012 passed by the learned Single Judge dismissing the writ petition (CWP No. 13764 of 2009) filed by the appellant challenging the order dated 18.05.2007 (Annexure P-5) passed by the Employees Provident Fund Appellate Tribunal (hereinafter referred to as 'the Appellate Tribunal') setting aside the order dated 25.10.2006 (Annexure P-2) passed by the Assistant Provident Fund Commissioner, Rohtak, imposing damages on respondent No.2 establishment, namely Vaish Technical Institute, District Rohtak.

There is delay of 1076 days in filing the appeal and the

appellant has filed application (CM No. 2229-LPA of 2015) for condoning the said delay. In the application, it has been stated that the certified copy of the impugned order dated 13.02.2012 was received in the office of the appellant on 20.06.2012 and immediately thereafter, on 13.07.2012, the same along with other relevant documents and the Vakalatnama was sent to Mr. Rajiv Sharma, Advocate, for filing the appeal. However, the said Advocate did not file appeal. It has been further stated that after two years, Mr. Rajiv Sharma, Advocate, was again asked to file the appeal, but no appeal was filed by him. Thereafter, on 03.12.2014, the appellant sent the papers to the present Advocate, requesting him to file the appeal. In spite of that, the appeal was filed on 18.04.2015. Thus, the delay of 1076 days has occurred in filing the instant appeal.

In support of the aforesaid application for condonation of delay, no affidavit of Mr. Rajiv Sharma, Advocate, has been filed. There is no document to show that he was ever assigned the case. After hearing learned counsel for the appellant, we are of the opinion that the explanation given by the appellant for condoning the delay in filing the appeal is not satisfactory. However, in the interest of justice, we have heard learned counsel for the appellant on merits also.

During the course of arguments, it has not been disputed that the payment of all contribution to the Provident Fund was made by the respondent establishment. But for making the delayed payment, damages

under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act'), were imposed on the respondent establishment. With regard to imposition of damages, the Appellate Tribunal vide order dated 18.05.2007 recorded a finding that there was no intentional failure on the part of the respondent establishment in non-payment of contributions under the Act in time. It was recorded that the respondent establishment had made efforts with the State Government for release of the grant, and as soon as they received the grant, same was deposited with the appellant. Therefore, if there was any delay, it was not intentional or deliberate, but was beyond the control of the respondent establishment.

The learned Single Judge upheld the said order passed by the Appellate Tribunal, while observing that under Section 14B of the Act, the competent authority has a discretion to impose damages which it may think fit keeping in view the facts and circumstances of a case. It has been observed that before imposing damages, the competent authority is required to see whether a default is justified or intentional in the given set of circumstances or not. The learned Single Judge has observed that in the present case, the Appellate Tribunal has rightly come to the conclusion that the competent authority without considering the facts and circumstances of the case wrongly exercised its discretion and imposed damages under Section 14B of the Act. The said order passed by the Appellate Authority

has been found to be legal and the learned Single Judge has come to the conclusion that there is no ground to interfere in the discretion exercised by the Appellate Tribunal.

In view of the above, we are of the opinion that there is neither any ground to condone the long delay of 1076 days in filing the instant appeal, nor there is any merits in the present appeal.

Consequently, the application (CM No. 2229-LPA of 2015) for condoning the delay as well as the appeal are dismissed.

(SATISH KUMAR MITTAL)
JUDGE

September 04, 2015
ndj

(MAHAVIR S. CHAUHAN)
JUDGE