IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.364 of 2015 (O&M)
Date of Decision: 20.07.2015

Assistant Provident Fund Commissioner
..... Appellant

Versus

The Employees Provident Fund Appellate Tribunal & Anr.

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Rajiv Sharma, Advocate
for the appellant.

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S.S. SARON, J.

This appeal has been filed by the appellant-Assistant Provident Fund Commissioner against the order dated 01.05.2013 passed by the learned Single Judge in CWP No.9203 of 2013. Along with appeal, CM No.709-LPA-2015 has been filed seeking condonation of 640 days' delay in filing the appeal.

The case of the appellant is that the respondent No.2-M/s Frick India Ltd. was bound to deposit damages, interest and penalty for the delay in depositing the Employees Provident Fund for the period from November 1990 to April 1995. Respondent No.2-M/s Frick India Ltd., it is stated, did not deposit the amount of provident fund dues in time for the said period. The appellant had deposited Rs.1,57,963/- vide challan dated 07.02.2003 and Rs.1,41,554/- vide challan dated 25.4.2003. Therefore, according to the appellant, the amount of provident fund for the said period was deposited in the year 2003 after more than eight years.

The respondent No.2-M/s Frick India Ltd. filed an appeal before the Employees Provident Fund Appellate Tribunal, New Delhi ('Tribunal' - for short) and the learned Tribunal vide order dated 09.02.2010 (Annexure P-4) held that during the said period from November 1990 to April 1995, stay order was in force, so no contribution was deposited. It was noticed that the fact of the stay being in force during the aforesaid period was not disputed. A reference was made vide circular No.R-11025(25)-87 SS.II, and it was held that during the period when the stay was in force, the dues were to be calculated on the next month of the judgment. The said circular made it clear that during the period, when the stay was in force, no contribution was payable and party was not liable for the default.

The appellant aggrieved against the order dated 09.02.2010 (Annexure P-4) passed by the learned Tribunal, filed CWP No.9203 of 2013 in this Court after almost three years of the said order. The learned Single Judge considered the only argument against the order dated 09.02.2010 (Annexure P-4) passed by the learned Tribunal was that penalty and interest could have been imposed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ('Act' – for short) for the period when the stay order was issued by a Court of competent jurisdiction was in force. It was held that this argument had been repelled by the learned Tribunal for good and sufficient reason. On lifting of the stay order, arrears of contribution may be payable but penalty or interest could not be imposed unless indicated in the order. No reason was found to interfere with the order and the writ petition was dismissed on 01.05.2013.

The appellant aggrieved against the order dated 01.05.2013 passed by the learned Single Judge has filed the present appeal on 02.03.2015 being delayed by 640 days. It is stated that the case was finally decided by the Hon'ble Supreme Court in April, 1995, however, dues were deposited on 07.02.2003 and 25.04.2003 that is after a lapse of seven-eight years. According to the provisions of the Act, the respondent No.2 was to deposit the provident fund dues in time otherwise the respondent was required to pay the damages, interest, penalty etc. as per the provisions of the Act. A reference is made to Para No.30 of the EPF Scheme, 1952, which provides that the employer shall in the first instance pay both the contributions payable by him and also on behalf of the member employed by him or by or though a contractor. The dues are required to be paid within fifteen days of the close of each month as contemplated in para 38 of the Scheme. Any deviation from this would amount to breach of trust and payment of dues made late would be subject to levy of damages under Section 14-B of the Act specially late payment of employees share of contribution being the trust money with the employer.

The reasons given for condoning the delay which is supported by an affidavit of the Assistant Provident Fund Commissioner (Legal) are that on receipt of certified copy of the judgment passed by this Court, the matter was examined by the office of the concerned department for taking necessary steps in the matter. Then, a decision was taken by the authorities to file writ petition. The learned counsel was requested to file the appeal against the impugned judgment. It is submitted that delay in filing the appeal had been caused in processing the case in the office of the appellant. There was no intentional delay and the delay had been caused due to the reasons explained in the application.

The said delay of 640 days in filing the appeal and the only reason given is that of processing the case in the office of the appellant, is wholly unsatisfactory.

Even otherwise, we are of the view that for the period when the stay order was in operation and the amount of provident fund which has already been deposited, the exercise to impose damages, penalty and interest were uncalled for. A party indeed cannot be faulted for the stay, which the Court had granted was in force. The principle of *actus curiae neminem gravabit,* that is, an act of Court shall prejudice no man and where a delay in action is the act of the Court, neither party shall suffer for it would apply. The learned Tribunal had referred to the circular No.R-11025(25)-87 S.S.-II to hold that when the stay was in force the dues were to be calculated on the next month of the judgment. The same is in consonance with the principle that has been adverted to above.

As regards the delay of eight years after the final order stated to have been passed by the Hon'ble Supreme Court, the question of delay is sought to be raised on the strength of Para 30 of the EPF Scheme, 1952. However, it is not shown that the provisions of the said Scheme are mandatory in nature. Besides, none of the employees for whose benefit the amount was to be deposited has complained or raised any objection for the late deposit. It is not shown that any prejudice has been caused to anyone so as to levy damages, penalty and interest for the default.

This aspect regarding levy of penalty and interest is to be considered in the back drop that the appellant itself has caused considerable and substantial delay. It may be noticed that after the order that had been passed by the learned Tribunal on 09.02.2010 (Annexure P-4), the appellant filed a writ petition i.e. CWP No.9203 of 2013 after a lapse of three years. Besides, after the writ petition was dismissed by the learned Single Judge on 01.05.2013, the present appeal has been filed on 02.03.2015 after the lapse of one year and ten months. There is no explanation much less sufficient explanation for the inordinate delay that has been taken. Therefore, where the appellant itself has delayed and defaulted in the matter for a period of almost five years, it would be iniquitous at this stage to reopen the matter after a period of twelve years of the deposit of the amount in 2003 by respondent No.2.

In the circumstances, we find no merit in the application seeking condonation of 640 days' delay in filing the appeal as also in the appeal.

Consequently, the application seeking condonation of delay in filing the appeal as well as the appeal, are dismissed.

(S.S. SARON)
JUDGE

20.07.2015
'yogesh'/A.Kaundal

(RAMENDRA JAIN)
JUDGE