

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2179/2015**

% Judgement pronounced on: 09.03.2015

M/S. THIRUMALAI CONSTRUCTIONS AND ENGINEERING
INDIA PVT. LTD. Petitioner

Through: Mr. S.K. Gupta, Adv.

versus

ASSISTANT PROVIDENT FUND COMMISSIONER-II

.....Respondent

Through: Mr Arvind Kumar Verma, Adv.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

1. Issue notice.
2. Mr. Arvind Kr, Advocate accepts notice on behalf of the respondent.
3. The petitioner in the present petition has submitted that the proceedings under Section 7A of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) were initiated by the respondent against the petitioner for the period 2010-11 to 2012-13.
4. The Assistant Provident Fund Commissioner passed an order under Section 7A of the Act against the petitioner. On 07.01.2015, the petitioner preferred the statutory appeal under Section 7-I of the Act against the said order dated 15.10.2014.
5. It is submitted by the petitioner that Central Government has not appointed any Presiding Officer of the Appellate Tribunal and the result is

that the statutory Appeals are not being heard by Appellate Tribunal.

6. It is further submitted on behalf of the petitioner that the post of the Presiding Officer Appellate Tribunal is vacant from 01.12.2014.

7. It is submitted that there is every apprehension to the petitioner that respondent may initiate coercive actions for recovery of the amounts assessed by the Assistant Provident Fund Commissioner.

8. It is submitted that the act of Central Government, by not appointing the Presiding Officer of the only Appellate Tribunal, amounts to denial of lawful legal rights of statutory Appeal to the petitioner and it is prayed that the respondent be restrained from taking any coercive measure against the petitioner in pursuance to the impugned order till the pendency of the statutory appeal bearing ATA No. 31(06) 2015 filed before the statutory Appellate Tribunal.

9. It is also submitted that on earlier occasions also, the same situation had arisen and in the case of *M/s Pashupati Spinning & Weaving Mills Ltd.*, WP (C) 586/2006 and *M/s Centaury Fibre Plates Pvt. Ltd. Vs. EPFO*, W.P. (C) No. 8742/2014, this Hon'ble Court had observed as under:-

“Since the Tribunal is not in existence, therefore, the directions passed in the order dated 17.11.2014 shall remain stayed”.

This Hon'ble Court also in another case W.P. (C) No. 15093/2004 titled as *M/s Old Village Industries Ltd. Vs. Asstt. PF Commissioner* has given directions that if appeals are filed and proof thereof is shown to the Recovery Officer, then said Officer would not affect recovery of the demand issued under Section 7A of the Act till decision of the stay application and also made it clear that the direction would obviously operate only till the

disposal of the stay application by the competent authority.

10. It is not disputed on behalf of the respondent that Presiding Officer of the statutory Tribunal has not yet been appointed by it. It is also admitted that the petitioner has filed the statutory Appeal and it could not be heard for the absence of the Presiding Officer of Appellate Tribunal.

11. In view of Section 7-I of Employee's Provident Fund and Miscellaneous Provision Act, 1952, it is a statutory right of the petitioner to file an Appeal before the Tribunal.

12. Unfortunately, his appeal could not be heard since the Tribunal is not headed by its Presiding Officer and the Government has failed to appoint the Presiding Officer. The statutory right of the petitioner needs to be protected.

13. As brought to my notice by the petitioner, in the earlier petitions mentioned above, this right of the petitioner in these petitions, on the same facts and circumstances, had been protected.

14. In view of the ratio of the above-mentioned judgments, I hereby direct the respondent not to take any coercive measure pursuant to the impugned order till statutory appeal is being heard by the Tribunal.

15. However, nothing in this order shall tantamount to expression of opinion on the merit of case of parties before Appellate Tribunal.

With this direction, the present petition stands disposed of.

Dasti.

**DEEPA SHARMA
(JUDGE)**

MARCH 09, 2015

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