

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

+ **W.P.(C) 2807/2015**

% Judgement pronounced on: 20.03.2015

M/S. S.D. LAHANE

..... Petitioner

Through: Mr Rajiv Shukla and Ms Shubham
Saxena, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Mr Rakesh Kumar, Standing Counsel for
R-1

Mr D. Rajeshwar Rao and Mr Charanjeet Singh,
Advs for respondent Nos. 2 and 3

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

CM No. 5035/2015 (Exemption)

Allowed, subject to just exceptions.

The application stands disposed of.

W.P.(C) 2807/2015 and CM No.5034/2015 (direction)

1. Issue notice.
2. Mr. Rakesh Kumar, Standing Counsel accepts notice on behalf of respondent No.1 and Mr D. Rajeshwar Rao, Adv. accepts notice on behalf of the respondent Nos.2 and 3.
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 No.3 against the petitioner for the period, 04/2005 to 03/2013.

4. The Assistant Provident Fund Commissioner passed an order under Section 7A of the Act against the petitioner. On 11.03.2015, the petitioner preferred the statutory appeal under Section 7(I) of the Act against the said order dated 8.12.2014 and 25.02.2015.

5. It is submitted by the petitioner that the respondent No.1 i.e. Union of India 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 EPF Appellate Tribunal is a National Appellate Tribunal and there is only one Appellate Tribunal in the entire Nation. Since respondent No. 1 has failed to appoint the Presiding Officer of the statutory Appellate Tribunal, a writ petition bearing WP(C) No. 8429/2014 was filed by the Bar Association of the Tribunal before this Court which was disposed of on 18.02.2015 by Hon'ble the Chief Justice. But, as per their contentions, no Presiding Officer has been appointed till date.

7. It is submitted that there is every apprehension to the petitioner that respondent Nos. 2 & 3 may initiate coercive actions for recovery of the amounts assessed by the Assistant Commissioner.

8. It is submitted that the act of respondent No.1, 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 Nos. 2 and 3 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.266(09) 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 *Arihant Threads Ltd Vs. Union of India*, W.P.(C) No. 333/2004, a Division Bench of Punjab and Haryana High Court had passed an order directing all the authorities to maintain status quo in such matters where the Chair of the Appellate Tribunal is lying bare and vacant. The relevant portion of the judgment is reproduced hereunder:-

“.... if such 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 7-A of the Act till decision of the stay application.”

“In comity to the different orders passed by various Benches of this Court and to avoid unnecessary prejudice to the Petitioner resulting from inaction on the part of the Union for such a considerable period, it is in the interest of justice to restrain the Respondents from taking any coercive steps to recover the amount which is the subject matter of these writ petitions.”

10. It is also contended that the ratio of the said order has been followed by this court in the matter of *Elbee Services Vs. Union of India*, WP(C) No. 10369/2004.

11. It is not disputed on behalf of the respondent no.1 that Presiding Officer of the statutory Tribunal has not yet been appointed by it. This fact is also not disputed on behalf of the respondent nos. 2 and 3. 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.

12. 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.

13. 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.

14. 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.

15. In view of the ratio of the above-mentioned judgments, I hereby direct the respondent nos. 2 and 3 not to take any coercive measure pursuant to the impugned order till statutory appeal is being heard by the Tribunal.

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

17. Learned counsel for the respondent-Department has made a request that a day be fixed for appearance before the Presiding Officer of the Employees' Provident Fund Appellate Tribunal (EPFAT) as the Presiding Officer is likely to be appointed by 1st April, 2015. This request cannot be conceded to because it is the prerogative of the EPFAT to fix its board. However, it is made clear that the stay is till the appeal is being heard.

With this direction, the present petition stands disposed of.

CM No. 5034/2015 also stands disposed of. *Dasti.*

**DEEPA SHARMA
(JUDGE)**

MARCH 20, 2015/bg