

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

+ **W.P.(C) 2817/2015**

% Judgement pronounced on: 20.03.2015

+ W.P.(C) 2817/2015

M/S. J. S. DESIGNERS LTD Petitioner

Through: Mr Ashish Batra, Adv.

versus

REGIONAL P .F. COMMISSIONER-II Respondent

Through: Mr Arvind Kumar Verma, Adv.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

CM No. 5052-53/2015 (Exemption)

Allowed, subject to just exceptions.

The applications stand disposed of.

W.P.(C) 2817/2045

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 11/2001 to 05/2006.
4. The Assistant Provident Fund Commissioner passed an order under Section 7A of the Act against the petitioner. On 09.03.2015, the petitioner

preferred the statutory appeal under Section 7-I of the Act against the said order dated 30.12.2014.

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 being ATA No.246(4)2015 filed on behalf of the petitioner before the statutory Appellate Tribunal.

9. 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.

16. 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.

Dasti.

**DEEPA SHARMA
(JUDGE)**

MARCH 20, 2015

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