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

Date of decision: 18th February, 2015.

\+ **W.P.(C) 8429/2014 & CM No.19476/2014 (for directions)**

EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL BAR ASSOCIATION & ANR ..... Petitioners

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

Versus

UNION OF INDIA & ANR ..... Respondents

Through: Mr. Manish Mohan, Ms. Sidhi Arora, Mr. Puja Sarkar and Ms. Mina Shaheen, Advs. for UOI.
Mr. R.C. Chawla, Adv. for R-2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition, under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), seeks direction for expeditious appointment of Presiding Officer as well as other staff of the Employees Provident Fund Appellate Tribunal constituted under Section 7D of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, to enable the said Tribunal to function fully and effectively.

2. It is the case of the petitioners, being an Association of the Advocates practicing before the said Tribunal, (i) that considerable time is taken in making appointment of the Presiding Officer of the said Tribunal, after the previous appointee demits office and which results in long periods of time, when the Tribunal is without a Presiding Officer. It is stated that the Tribunal so remained non-functional for a period, of nearly six months, after 19th January, 2001, of nearly one year eleven months after 13th August, 2003, of nearly one year after 31st October, 2005; (ii) that the Presiding Officer at the time of filing of the petition on 21st November, 2014, was retiring on 30th November, 2014 but no steps had been taken for appointing a replacement; (iii) that even otherwise, the Tribunal was functioning on skeleton staff which too was outsourced through an outside placement agency and no steps had been taken to fill up the staff vacancies on a permanent and regular basis; and, (iv) that though this Court vide orders dated 29th April, 2008 and 17th September, 2008 in W.P.(C) No.3291/2008 earlier filed by the petitioners in this regard, had directed immediate steps to be taken for filling up of the staff vacancies in the Tribunal but the said directions had also not been complied with.

3. The petition was entertained and the counsel for the respondent Union

of India asked to obtain instructions. On 10th December, 2014, we were told that the process of filling up of vacancies of the members as well as staff was in progress and the same would be completed within a week. Similar assurances were given from time to time. Today also a similar assurance is given and it is stated that a proposal for appointment has already been sent to the Appointment Committee of the Cabinet on 28th January, 2015 and regular Registrar has already assumed charge of the post on 2nd February, 2015. We are also informed that the Supreme Court in W.P.(C) No.999/2014, a matter relating to establishment of the Bangalore Bench of the Tribunal, is also monitoring the progress of the appointment of the Presiding Officer of the Tribunal at Delhi.

4. The Employees Provident Funds Act was enacted to provide for the institution of the provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments. Needless to state, it is a legislation beneficial to the employees. The provision for setting up of the Tribunal was incorporated in the Employees Provident Funds Act by amendment, with effect from 1st July, 1997 to hear and decide appeals against the orders of the Government or the Provident Fund Authorities under the said Act as well as grievances against any Notification issued by

the Government under the Act. The said Tribunal is to consist of one person only to be appointed by the Central Government and as per Section 7D(3), a person shall not be qualified for appointment as a Presiding Officer of the Tribunal, unless he is or has been or is qualified to be a Judge of a High Court or a District Judge. Vide Section 7E of the Act, the Presiding Officer is to hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty two years, whichever is earlier. The Central Government has, in exercise of the powers conferred by Section 21(1) of the Act, made the Employees Provident Funds Appellate Tribunal (Procedure) Rules, 1997 and Rule 14(2) whereof provides that every appeal shall be heard and decided, as far as possible, within six months from the date of its registration. As per the said Rules, the Tribunal is to work on all days, except on Saturdays and Sundays and other public holidays, from 9.30 A.M. to 6.00 P.M. with the sitting hours of the Tribunal being from 10.30 A.M. to 1.30 P.M. and from 2.30 P.M. to 5.00 P.M. The said Rules further provide that the entire administrative expenses of the Tribunal shall be borne by the Central Board of Trustees, Employees Provident Fund and that the fee or any other money received by the Tribunal shall form a part of the Administrative Fund of the Central

Board. Section 7H of the Employees Provident Funds Act provides for the Central Government to determine the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions and to provide the Tribunal with such officers and other employees. In exercise of the said powers, a provision has been made for a Registrar of the Tribunal. No material has been placed before us by either party of the other assessment and provision, if any made of the remaining staff of the Tribunal.

5. The provision made by the Central Government in the Rules aforesaid, for decision of the appeal by the Tribunal within a period of six months, is indicative of the legislative intent and desire for expeditious disposal of the matters brought before the Tribunal. On the other hand, the Central Government which is also responsible for making appointments of the Presiding Officer and staff members of the Tribunal has been delaying the appointments to the Tribunal and which has resulted in the Tribunal being without a Presiding Officer in the past, for periods ranging from six months to nearly two years. Such delays on the part of the Central Government are undoubtedly in violation of the legislative mandate for disposal of the appeal within six months. The Central Government is

clearly in defiance of the Rules made by itself.

6. We are unable to appreciate the reason therefor. As aforesaid, the term of the Presiding Officer of the Tribunal is fixed and it is at all times known, as to when the vacancy in the office of the Presiding Officer will occur, save in the case of resignation or removal. When the date, on which the vacancy in the office of the Presiding Officer is to occur, is so known, there is no reason for the process for appointment of a substitute being not commenced well in advance and the appointment being not finalised well before the vacancy is to occur, so that the new Presiding Officer takes over the very next day to the date of expiry of the term of the earlier. The catchment area for such appointments also is not much or indeterminate and according to us should also not pose any problem. To provide against last minute uncertainties, in accordance with the Rules, a panel must be prepared so that in the event of the selected candidate not joining, the next on the panel can be offered the post.

7. All the aforesaid would apply to the other staff members also.

8. The Government has off late entered into the arena of tribunalisation, to reduce the burden on the Courts and provide efficacious relief where

deemed most necessary and to also provide for determination by the experts. However, such delays on the part of the Government in making appointments, nullifies the whole purpose of tribunalisation.

9. We may notice that the Supreme Court as far back as in ***L.Chandrakumar Vs. Union of India*** (1997) 3 SCC 261 noted the observations made in the Malimath Committee Report on the functioning of Tribunals. It was observed even then that though several Tribunals are functioning in the country, not all of them have inspired confidence in the public mind. One of the reasons given for the same was the inferior status and casual method of working of the Tribunals and which affects the quality of justice the said Tribunals are expected to mete out. The Supreme Court in the said judgment had suggested that a wholly independent agency for administration of all the Tribunals be set up and that the Tribunals, as far as possible should be under a nodal Ministry which will be in a position to oversee the working thereof. The creation of a single umbrella organization, it was felt will remove many of the ills with which the Tribunals were suffering.

10. Again, in ***United Bank of India Vs. Satyawati Tondon*** (2010) 8 SCC

110, with respect to the Debt Recovery Tribunals it was observed that though the same worked well for some time but with the passage of time the proceedings before the said Tribunals became synonymous with those of the regular Courts, particularly because of the flawed appointment procedure adopted by the Government resulting in delay in disposal of cases instituted before the Tribunals. The same sentiment was reiterated in ***Standard Chartered Bank Vs. Dharminder Bhohi*** 2013 (12) SCALE 124.

11. Inspite of repeated reminders and lament of the Supreme Court, as is evident from the present case, things have not improved.

12. The Government of course has its explanation for the delays in the appointment of the Presiding Officer this time around also. It is stated that the process was initiated on 6^{th} June, 2014 but only a few applications were received, which too were incomplete or not through the proper channel; thereafter letters were sent to the parent offices of the applicants and only in December, 2014 i.e. after the earlier incumbent had demitted the office, the meeting of the Selection Committee comprising of Secretary (Labour & Employment), Secretary (Law) and the nominee of the Department of Personnel and Training, was proposed. It is further explained that the

Selection Committee in or about January, 2015 recommended a panel of two officers and recommendation is now pending with the Appointment Committee of the Cabinet. Similarly, with respect to the filling up of the vacancies of the subordinate staff, it is stated that a vacancy circular has been issued and publicity, as required, is being given.

13. We are however not satisfied with the aforesaid explanation. If the experience of the Government is that the process takes longer than six months, it should be commenced so much before time, as may be deemed expedient. The mandate is that there is to be no hiatus in the office of the Presiding Officer or any staff member, except for unforeseen reasons.

14. We accordingly, while disposing of this petition, grant time till 10th April, 2015 to the Central Government, to make the appointment of the Presiding Officer and time till 30th June, 2015 to fill up all the other vacancies including of staff. To ensure, that such a situation does not arise in future, we make the Secretary (Labour & Employment) responsible for ensuring that the process of filling up of the vacancy likely to arise in the office of the Presiding Officer or any other staff member, is initiated well in time to ensure that the substitute takes over the very next day of the earlier

incumbent demitting office. We have made the office of the Secretary (Labour & Employment) responsible in this regard, being of the view that such delays occur owing to the responsibility being not fixed. Accountability is one of the ingredients of good governance and no purpose will be served in this Court repeatedly issuing directions, without the responsibility being fixed. Though the Supreme Court in ***In Re: Special Reference No.1 of 2012*** (2012) 10 SCC 1 has held that every holder of a public office by virtue of which he acts on behalf of the State, is ultimately accountable to the people in whom the sovereignty vests but what is found is that for the reason of the said responsibility / accountability vesting not in a single person but collectively in several, in the event of non-performance, none is accountable with the buck being passed from one to another. We feel it our duty to now devise a system for ensuring good governance by fixing accountability of one person and have accordingly for the present purposes, fixed the responsibility of Secretary (Labour & Employment) and even if the ultimate act of appointment may be dependent upon contribution of others, the Secretary (Labour & Employment) would be responsible for ensuring compliance from other officials / offices within time. Else, the Secretary (Labour & Employment) would be guilty of violating the directions of the Court. The need for accountability, particularly on the part of the civil servants, was again emphasized by the Supreme Court in ***T.S.R. Subramanian Vs. Union of India*** (2013) 15 SCC 732.

15. We further direct the Ministry of Labour & Employment to make each incumbent to the office of the Secretary (Labour & Employment) aware of this direction of this Court, to ensure compliance.

The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

FEBRUARY 18, 2015
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