

UNREPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.1385 OF 2011.**

Shiv Shakti Shetkari Sahakari
Sakhar Karkhana Ltd.,
Washi (Tandulwadi), Dist.
Osmanabad, through its
Chairman Shri Panditrao
S/o Ganpatrao Chede,
Aged 76 years, Occ.Agril.,
R/o Washi, Dist.
Osmanabad. ... Petitioner.

Versus

1. The Union of India.
2. The Asstt. Provident
Fund Commissioner,
Solapur.
3. The State of Maharashtra
through the Secretary
to the Government of
Maharashtra, in the
Department of Labour,
Mantralaya, Fort, Mumbai. ... Respondents.

...

Mr.S.S.Choudhari, advocate for the petitioner.
Mr.V.S.Badakh, A.G.P. for the State.
Mr.K.B.Choudhari, advocate for Respondent No.2.

...

**CORAM : S.V.GANGAPURWALA AND
V.K.JADHAV, JJ.**

Date : 07.09.2016.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Heard.

2. Rule. Rule returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

3. Mr.Choudhari, learned counsel for the petitioner states that the order U/s 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is passed without considering the documents on record. Even Review U/s 7-B was disposed of without considering the documents on record. The appellant could not remain present before the Appellate Tribunal and the Appellate Tribunal on merits in absence of the present petitioner dismissed the appeal. The learned counsel submits that the sugar factory was closed for some time. Many of the workers/labours were not employed during the said period and even salary and wages for the said

period has been considered while adjudicating the liability of the petitioner. According to the learned counsel, erroneous calculations are made. Only ledger was seen and not the other documents.

4. Mr.Choudhari, learned counsel for the Respondent submits that the total amount due as per the order passed by the authority and the subject matter of the present Writ Petition has been recovered. The petitioners on their own volition have deposited the said amount. The learned counsel submits that the petitioner remained absent before the Appellate Forum. The notice was served on the petitioner. No reason is forthcoming for not appearing on the date the matter was fixed.

5. We have considered the submissions. We have also gone through the order passed by the Tribunal in appeal.

6. If the appellant remains absent in an appeal, the course open to the Appellate Authority would be to dismiss the appeal for non-

prosecution or for default but ought not to have decided it on merits.

7. Even if we consider that the Respondents have decided it on merits, perusal of the judgment, it is manifest that no reasons are forthcoming in the said judgment. The Tribunal ought to have given reasons for not accepting the case put forth by the petitioner in its appeal. It has also not dealt with the grounds raised in the appeal.

8. Considering the fact that the appeal is decided in absence of the appellants, we are inclined to grant one more opportunity to the petitioner, however, the petitioner also deserves to be mulct with costs.

9. In the result, we pass the following order :

a) The impugned judgment and order passed by the Employees' Provident Fund Appellate Tribunal dated 25.9.2010, is quashed and set aside subject to payment of cost of Rs.20,000/-

(Rupees twenty thousand) by the petitioner to the Respondent No.2 on or before 23th October, 2016. The matter is remitted back to the Appellate Tribunal for deciding it on merits. The appellant shall appear before the Appellate Tribunal on 26th October, 2016.

b) Rule accordingly made absolute in above terms. No costs.

Sd/-
(V.K.JADHAV, J.)

Sd/-
(S.V.GANGAPURWALA, J.)

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