

In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 14492 of 2013
Date of Decision: 18.1.2016.

M/s K.K.Kohli and Brothers Private LimitedPetitioner

Versus

Assistant Provident FundRespondents
Commissioner and another

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vijay Pal, Advocate
for the petitioner.

Mr. Sandeep Goyal, Advocate
for respondent No. 1.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing of notice dated 16.1.2004 (Annexure P-1) and orders dated 15.4.2004 (Annexure P-3), 27.10.2010 (Annexure P-5) and 14.6.2011 (Annexure P-7).

Learned counsel for the petitioner during the course of arguments has restricted his prayer to the effect that order dated 27.10.2010 (Annexure P-5) passed by the Appellate Tribunal-respondent No. 2 be set aside as the same was passed without issuing notice to the petitioner. In this regard, learned counsel for the petitioner has placed reliance on interim order dated 12.8.2010 whereby fresh notice was ordered to be issued to the petitioner. However, the interim order passed on 11.10.2010 did not show as to whether notice has been served on the petitioner or not.

Learned counsel for the petitioner has further submitted that in fact, petitioner had not received any notice from the Appellate Tribunal and due to this reason, none could appear on behalf of the petitioner before the Appellate Tribunal on 11.10.2010. Learned counsel has further submitted that in consequence of setting aside the order Annexure P-5, order passed in review application Annexure P-7 was also liable to be set aside.

Learned counsel for respondent No. 1, on the other hand, has opposed the petition.

In the present case, controversy involved is to the limited extent as to whether petitioner had received notice from the Appellate Tribunal in terms of order dated 12.8.2010 or not before the appeal filed by the petitioner was decided by the Appellate Tribunal.

Order passed by the Registrar, Employees Provident Fund Appeal Tribunal dated 12.8.2010 (shown to this Court during the course of arguments) reads as under:-

“Present: None for the appellant.

Shri DevP Bhardwaj, Advocate for the respondent.

Fresh notice be issued to the appellant.

The respondent is offered last opportunity to file counter within 4 weeks, with an advance copy to the counsel for appellant. The counsel for appellant is also directed to file rejoinder within 1 week thereafter, if any.

The case is adjourned for final hearing before Hon'ble Court of Presiding Officer on 11.10.2010.”

Thus, as per the above order, fresh notice was ordered

to be issued to the petitioner.

Interim order dated 11.10.2010 passed by the Appellate Tribunal (shown to this Court during the course of arguments) reads as under:-

“Present: None for the appellant.

Sh. Dilbag Singh, Advocate for the respondent.

The case was posted today for final hearing. However, the appellant was not represented either by an advocate or by an authorized representative.

As per Rule 15 either the appeal is to be dismissed for default or Reserved for Order. This being a case of 2004 no purpose will be served by dismissing it for default. Hence the case is reserved for order on 27.10.2010.”

Thus, a perusal of the above order shows that it does not make a mention qua the service of notice effected on the petitioner. It is probable that the petitioner could not put in appearance before the Appellate Tribunal on 11.10.2010 as it had not received the notice. There is nothing available on record to suggest to the contrary. Hence, it would be just and expedient to set aside the order dated 27.10.2010 (Annexure P-5) passed by the Appellate Tribunal and direct the said tribunal to pass a fresh order, in accordance with law.

Accordingly, order dated 27.10.2010 (Annexure P-5) is set aside. Learned Appellate Tribunal is directed to pass a fresh order, in accordance with law. Consequently, the order dated 14.6.2011 (Annexure P-7) passed by the Appellate Tribunal on the review application moved by the petitioner, is set aside. Parties are directed to appear before the Employees Provident Fund Appellate

Tribunal on 2.3.2016.

Petition stands disposed of accordingly.

(SABINA)
JUDGE

January 18, 2016
Gurpreet