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

+ LPA 117/2016 & CM Nos.6449/2016 (*stay*)

MISSION DIRECTOR, DELHI

STATE HEALTH MISSION (DSHM) Appellant

Through: Ms.Vibha Mahajan Seth, Adv.

Versus

S.F.T.B CONTROL WORKERS' ASSOCIATION

THR ITS PRESIDENT & ORS Respondents

Through: Mr. R.K. Saini, Adv. for R-1.

Mr.R.C.Chawla, Adv. with Mr.Charanjeet Singh,
Adv. for R-2.

Mr. K.P. Mavi with Mr. B.P. Mishra, Adv. for
R-3/ESIC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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07.12.2016

C.M.No.6450/2016 (*delay of 95 days*)

Heard.

In view of the facts and circumstances explained, the delay in filing the appeal is condoned and the application is disposed of.

LPA 117/2016

1. This appeal is preferred against the order dated 09.10.2015 passed by the learned Single Judge in Cont.Cas.(C) No.988/2013 which was filed by respondent No.1 herein alleging non-compliance of the order dated 05.04.2013 in W.P.(C) No.1743/2012.

2. The respondent No.1 herein/SFTB Control Workers' Association filed W.P.(C) No.1743/2012 claiming the benefit of implementation of the Circular dated 06.05.2011 with regard to the benefits provided under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the scheme made thereunder as well as the Employees' State Insurance Act, 1948. By order dated 05.04.2013, the said writ petition was allowed with a direction to the respondents to take requisite action within six months for extending the benefits under the Acts. It was also held that for the present, the benefits of the said Acts shall be extended w.e.f. 06.05.2011 and the question whether the employees are entitled to benefits even prior to 06.05.2011 was left open to be decided by the relevant authorities.

3. The respondent No.1 Association filed Cont.Cas.(C) No.988/2013 alleging non-compliance of the abovesaid directions. By the order under appeal dated 09.10.2015, the learned Single Judge issued notice to the Union of India, Ministry of Health and Family Welfare, Directorate General Health Services observing as under:-

"However, this Court is prima facie of the view that as the order dated 05th April, 2013 has not been reviewed in its entirety, petitioners are entitled to the benefit of the Employees Provident Fund Act, 1952 and the Employees State Insurance Act, 1948 w.e.f. 06th May, 2011 as recorded in the said order.

Since the respondent-institution has also taken up the plea/defence that it is impossible for it to comply with the Employees Provident Fund Act, 1952 and the Employees State Insurance Act, 1948 due to non-release of funds by the Central Government, this Court issues notice to Union of India, Ministry of Health and Family Welfare, Directorate General

Health Services through its Standing counsel, by registered post and dasti, returnable for 23rd February, 2016."

4. We have heard the learned counsel for both the parties. Having regard to the fact that the Contempt Case is still pending and by the order under appeal, the learned Single Judge had merely directed notice to the Union of India, we are of the view that the appeal under Clause 10 of the Letters Patent is not maintainable.

5. Even on merits, we found that the contention of the learned counsel for the appellant that the learned Single Judge should not have held that the order dated 05.04.2013 had not been reviewed in its entirety and, therefore, the petitioners in the Contempt Case are entitled to the benefit of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 w.e.f. 06.05.2011 is untenable. As we could see, the learned Single Judge has only expressed a *prima facie* opinion. Hence, it is open to the appellant to urge all the grounds permissible under law before the learned Single Judge and to contest the contempt proceedings. The appellant is also at liberty to seek clarification, if any, regarding the observations in the order under appeal by moving an appropriate application before the learned Single Judge.

6. Accordingly, the appeal is dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

DECEMBER 07, 2016/'pmc/anb'