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

+ W.P.(C) 8821/2015

ST ARVINDO ACADEMY Petitioner
Through: Mr. Sumit Kumar, Adv.

versus

ASSISTANT PROVIDENT FUND
COMMISSIONER (COMPLIANCE)
REGIONAL OFFICE, RANCHI Respondent
Through: Mr. R.R. Rajesh, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **18.07.2016**

W.P.(C) 8821/2015

1. This is a petition challenging the order dated 18th August, 2015 whereby the Employees Provident Fund Appellate Tribunal has rejected the application of the petitioner herein for restoration of the Appeal which was dismissed in default on 13th November, 2014.
2. The ground on which the Tribunal has dismissed the restoration application is that the said application was filed after three months of the passing of the order dated 13th November, 2014.
3. In the application for restoration, the petitioner has averred the following:

“3. It is respectfully submitted that the above matter was earlier fixed on 15.9.2014 and the matter was re-notified and fixed for arguments on 11.2.2015. However, in the last week of October, 2014, the applicant received a communication dated, 17.10.2014 whereby it was directed that the matter would be listed in camp office at Siliguri, West Bengal on 13.11.2014. True copy of the communication dated 17.10.2014 received in the last week of the October, 2014 is filed herewith as ANNEXURE A-2.

4. It is respectfully submitted that, when the counsel for the Applicant was informed about the said letter by the Applicant, the counsel showed his inability to appear in camp bench on the date fixed. The applicant was also not able to arrange for some other counsel for appearing in the matter on the short notice. Therefore, the counsel for the Applicant circulated a letter 3.11.2014 regarding his inability to appear before Camp at 'Siliguri, West Bengal for attending the matter. The said letter was duly served on the counsel for the Respondent No.2 also. True copy of the letter dated 03.11.2014 duly received in the office of this Hon'ble Tribunal is filed herewith as ANNEXURE A-3.

5. However, the appeal has been dismissed for default on 13.11.2015, in presence of the counsel for the Respondent.

6. It is respectfully submitted that the Applicant could not appear before the camp office at Siliguri because the counsel who was engaged by him in the matter was not in a position to go and attend the case at Siliguri due to his personal difficulty and the Petitioner was not able to engage another counsel for appearing at Siliguri at the final stage of the matter at such a short notice.

7. That Counsel for the applicant made, inquiry from the office of this Hon'ble Tribunal about the status of the appeal on 20.11.2014, as he was confident that the matter would not

have been taken up by the Camp office. However, he came to know that the matter has been dismissed for default.

8. As soon as the counsel for the Applicant got knowledge of the said order passed by this Hon'ble Tribunal for dismissing the appeal in default, the counsel for the Applicant immediately obtained the, certified copy of the impugned order. Thereafter, he took some time in preparing and sending the application, for recall of order dated 13.11.2014. In the mean time, he came to know that the office of this Hon'ble Tribunal is lying vacant and no purpose would be served even if the application is moved. During this period the period of limitation also expired. Thereafter, the Applicant immediately approached Hon'ble Delhi High Court in Writ Petition Civil No. 586 of 2015 for restoration of the appeal so that no coercive "measure could be taken by Respondent for enforcing the said illegal orders passed by Respondent.

9. Hon'ble Delhi High Court has been pleased to issue notice in the Writ Petition Civil No. 586 of 2015 on 21.1.2015 true copy of the said order is ANNEXURE A-4.

10. That on 20.2.2015, Hon'ble Delhi High Court has been pleased to grant liberty to the Applicant for moving application before this Hon'ble Tribunal for restoration of appeal as well as condonation of delay. True copy of the order dated 20.2.2015 in Writ Petition Civil No. 586 of 2015 is filed herewith as ANNEXURE A-5."

4. Reply to the application was filed by the respondent herein wherein in Para 8, 9 and 10, respondent has averred the following:-

"8. That in response to the Para under reply it is submitted that the appellant himself admitted that on 20.11.2014, he came to know the dismissal of the appeal. But it is a matter of fact that

this Hon'ble Tribunal was in functional till 28.11.2014, hence it is wrong to say that after he came to the knowledge of the dismissal order this tribunal was not in functioning.

9-10. That in response to the Para under reply (9-10) it is submitted that the petitions and applications are dismissed as withdrawn and further Hon'ble High Court vide order dated 20.02.2015, directed this tribunal to consider and decide the application in accordance with law. It is specifically submitted that the application is not filed within statutory period of 30 days."

5. Learned counsel for the respondent would submit that the stand of the School that pursuant to the dismissal of the Appeal on 13th November, 2014, the Tribunal was not functioning is incorrect in as much as the Presiding Officer had demitted the Office only on 28th November, 2014 and nothing precluded the petitioner to file an application before the Registrar of the Tribunal. Further he states that the application filed after 3 months is without any sufficient cause.

6. Noting the averments and submission made, this Court is of the view that after 28th November, 2014, there was no Presiding Officer in place for holding the proceedings. It is also noted that a Writ Petition (C) 586/2015 was filed by the petitioner in this Court in 2015 and the petitioner has been prosecuting the Writ Petition before this Court till 20th February, 2015, which was dismissed as withdrawn on the statement of the learned counsel

for the petitioner to file an application for restoration of the Appeal in Tribunal. The application for restoration was filed on 26th February, 2015, i.e., after six days of the dismissal of the Writ Petition. The learned Counsel for the respondent is correct to state that nothing precluded the petitioner to file an application before the Registrar of the Tribunal for restoration of the Appeal, but it is also noted from the application that this Court dismissed the Writ Petition on the statement made by the counsel for the petitioner to file an application for restoration of the appeal.

7. In any case, this Court is also of the view that as the petitioner has raised an issue of applicability of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 on the petitioner school which goes to the root of the question on the maintainability of the proceedings under Section 7(A) of the Act against the petitioner school, the present Petition needs to be allowed. The order of the Tribunal is set aside and the Appeal is restored to its original number but subject to the petitioner paying an amount of Rs.50,000/- to the Delhi High Court Legal Services Committee within a period for 4 weeks from today. Parties to appear before the Employees Provident Fund Tribunal on 1st September, 2016.

8. The Writ Petition is disposed of.

9. A copy of the order be sent to the EPF Tribunal.

CM. No. 19691/2015

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 18, 2016

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