

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10701 of 2016

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Solar Alternatives And Associated Programmes, Phulwarisharif, through its Secretary, Paul Mariadas son of late Selvaraj resident of St. Mary's Compound, Phulwarisharif, P.S. Phulwarisharif, District Patna.

.... Petitioner

Versus

1. Union of India through Provident Fund Commissioner, Employees Provident Fund Organization, Bhavishya Nidhi Bhavan, 14 Bhikaji Cama Place, New Delhi - 110066.
2. Presiding Officer, Employees Provident Fund Appellate Tribunal, 4th Floor, Scope Minar, Cor 2, Laxmi Nagar, Delhi 110082.
3. Assistant Provident Fund Commissioner, Bhavishya Nidhi Bhavan, R. Block, Patna, Bihar.
4. Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Bhawishya Nidhi Bhavan, Road No. 6, R.Block, Patna - 800001.
5. Enforcement Officer (E.P.F.), Employees Provident Fund Organization, Bhawishya Nidhi Bhavan, Road No. 6, R. Block, Patna - 1.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. K.M.Joseph, Advocate

For the Respondent/s : Mr. Sarva Deo Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-05-2017

Heard learned counsel for the petitioner and learned counsel for State Employees Provident Fund Organization.

2. In the present writ application, the petitioner has challenged the order dated 06.05.2016 passed by the Presiding



Officer of Employees Provident Fund Appellate Tribunal, New Delhi in ATA No. 164(3) of 2008.

3. The facts of the case, in brief, are that a proceeding under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'EPF Act') was initiated against the petitioner establishment. The petitioner establishment was inspected by the Enforcement Officer of the Employees Provident Fund Organization in the month of December, 2003. After examining the ledgers and vouchers for the period January, 2003 to March 2003, the Enforcement Officer concluded that Rs.44,000/- was paid as wages and the establishment had engaged about 30 labourers during the month of March, 2003 and accordingly, the establishment in question was coverable under the provisions of the EPF Act. Aggrieved with the report of the Enforcement Officer, the petitioner submitted an application before the Regional Provident Fund Commissioner, Patna that the establishment had employed less than 20 employees and thus it was not covered under the provisions of EPF Act. Against the order dated 23.03.2005 passed by the Assistant Provident Fund Commissioner, Bihar, Patna under Section 7-A of the EPF Act whereby it was declared that the provisions of EPF Act was applicable in respect of the petitioner establishment, the



petitioner filed an appeal before the Employees Provident Fund Appellate Tribunal, New Delhi in ATA No. 164(3) of 2008 which was dismissed on 05.07.2011.

4. The aforestated order was assailed by the petitioner by filing a writ petition before this Court vide CWJC No. 15096 of 2011. The said writ application was allowed by this Court vide order dated 03.12.2015. The operative portion of the said order passed by this Court reads as under :-

“Accordingly, the order of the Appellate Tribunal i.e. order dated 05.07.2011 passed by the Employee Provident Fund Appellate Tribunal, New Delhi in ATA No. 164(3) of 2008 is hereby set aside and the matter is remitted back to the Appellate Tribunal to pass order afresh on the basis of materials already on record and after affording full opportunity of hearing to the parties.

The writ petition stands allowed as directed hereinabove.”

5. Thereafter, the matter was taken up by the Appellate Tribunal on 06.05.2016 and since the petitioner failed to appear before the Tribunal, the appeal was dismissed for want of prosecution.

6. It is submitted by the learned counsel for the petitioner that the petitioner was regularly attending the



proceedings before the Tribunal. It had already filed its memorandum of appeal and other petitions on which it relied for assailing the order passed by the controlling authority. He contended that since the matter was remitted back to the Appellate Tribunal for deciding the matter afresh, even if the appellant was not represented on a particular date, the Tribunal ought to have decided the case on merits on the basis of materials available on record instead of dismissing the same in default.

7. *Per contra*, Mr. Sarva Deo Singh, learned counsel appearing for the State Employees Provident Fund Organization submitted that since there was no representation on behalf of the petitioner, the Tribunal has rightly dismissed the case for want of prosecution.

8. I have heard learned counsel for the parties and perused the record.

9. Keeping in view the nature of the order passed by this Court in CWJC No. 15096 of 2011, impugned order dated 06.05.2016 passed by the Appellate Tribunal cannot be sustained for the simple reason that when this Court had directed the Tribunal to decide the matter afresh on the basis of material available on record, the Tribunal ought to have decided the matter on merits instead of dismissing the same for want of prosecution.



10. In that view of the matter, order dated 06.05.2016 passed by the Presiding Officer of Employees Provident Fund Appellate Tribunal, New Delhi in ATA No. 164(3) of 2008 is set aside. The appellate tribunal shall proceed with the matter afresh and decide the case on merits in accordance with law.

11. The writ application stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.05.2017
Transmission Date	

