

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14375 of 2014

=====

The Bihar State Pollution Control Board through its Member Secretary, P.O.-
Shastrinagar, P.S.-Shastrinagar, Beltron Bhawan, Bailey Road, Patna-800023.

.... Petitioner

Versus

1. The Union of India through the Director, Department of Social Securities,
constituted under the Ministry of Labour 6th Floor, Shram Shakti Bhawan, New
Delhi.
2. The Assistant Provident Fund Commissioner, Employees Provident Fund
Organization, Bhavishya Nidhi Bhawan, R' Block, Patna.
3. The Regional Provident Fund Commissioner, Employees Provident Fund
Organization, Bhavishya Nidhi Bhawan, R' Block, Patna

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Ravi Shankar Ganguly, Advocate
Mr. Subhash Kumar Sinha, Advocate
For the Respondent/s : Mr. Prashant Sinha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-04-2017

Heard Mr. Ravi Shankar Ganguly, learned Advocate
for the petitioner and Mr. Prashant Sinha, learned Advocate for the
respondent nos. 2 and 3.

2. The petitioner has filed this writ application for
quashing the order dated 09.04.2003 passed by the Assistant
Provident Fund Commissioner (Compliance), Bihar, Patna (for short



‘APFC’) under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short ‘EPF Act’) assessing provident fund dues in respect of casual workers engaged against the petitioner and the order dated 10th January, 2008 passed by the Employees Provident Fund Appellate Tribunal, New Delhi in ATA No. 350(3)/2003 whereby the appeal preferred by the petitioner against the aforementioned order dated 09.04.2003 under Section 7-I of the EPF Act has been dismissed.

3. The petitioner-Bihar State Pollution Control Board is an establishment covered under the provisions of the EPF Act with effect from 31.03.1982.

4. A complaint was made against the petitioner for non-compliance of the EPF Act in respect of casual workers, on which a letter seeking clarifications was sent to the petitioner on 8th March, 2002. The petitioner submitted his reply vide letter dated 04.06.2002 that all statutory provisions are complied with in respect of regular employees except casual employees, for which board is approaching to the Government of India for getting notification for exemption under Section 16(2) of the Act. Being not satisfied with the reply of the petitioner, the APFC, initiated a proceeding under Section 7-A of the EPF Act. In order to ascertain the liability in respect of casual labourers, a notice was served upon the petitioner.



5. In reply to the notice under Section 7-A of the EPF Act, the petitioner advanced the following contentions:-

- (i) As per the provisions of the service rules adopted by the Bihar State Pollution Control Board, the casual employees are not the employees of the Board.
- (ii) The Board is in great financial crunch due to division of the State of Bihar.
- (iii) The Board should be given sufficient time for obtaining a notification by the Central Government/State Government under the provisions of Section 16(2) of the EPF Act.

6. On the other hand, the casual employees emphasized that all the employees are on the same footing in the eyes of the EPF and the schemes framed thereunder. They submitted details of salary disbursed to the casual employees by the petitioner for facilitating assessment of dues payable and the same was provided to the petitioner for confirmation/denial, but the petitioner failed either to confirm or deny in spite of several opportunities on flimsy grounds.

7. After hearing the parties, the APFC rejected the contentions of the petitioner and assessed the provident fund dues payable by the petitioner to the casual employees vide impugned order dated 09.04.2003.



8. The petitioner challenged the aforesaid order dated 09.04.2003 before the Appellate Tribunal under Section 7-I of the EPF Act.

9. Apart from the contentions advanced by the petitioner before the APFC while assailing the assessment order before the Appellate Tribunal, the petitioner tried to raise an issue of inconsistency between the Bihar Provident Fund Rules, 1948 and EPF Act. It was submitted that in view of the inconsistency between the Bihar Provident Fund Rules, 1948 and the EPF Act, the law made by the State of Bihar would prevail in case of the employees working under the establishment of the petitioner and, thus, the casual employees cannot be assessed under the EPF Act, which is legislation made by the Parliament. The Appellate Tribunal elaborately discussed the contentions of the petitioner while dismissing the appeal preferred before it against the order passed by the APFC and gave its finding that the contentions advanced by the petitioner lack merit.

10. While challenging the order passed by the Appellate Tribunal, the learned counsel for the petitioner submitted that the impugned order dated 10th January, 2008 passed in ATA No.350(3)/2003 is erroneous in law. He submitted that the service rules of the Government of Bihar did not permit for grant of benefit



of provident fund to its casual employees. Hence, the casual employees can not be extended the benefit of provident fund under the EPF Act. He submitted that the petitioner is depositing the contribution with regard to its regular employees and the case of casual employees stand on a completely different footing. He submitted that in view of Article 254 of the Constitution of India where a law made by the legislature of a State with respect to matters enumerated in the concurrent list contains any provision repugnant to the provisions of a law made by the Parliament then the law so made by the legislature of such State shall prevail in the State. He submitted that the plea of the petitioner that it had claimed before Central Government for excluding the casual employees of the establishment from the purview of the Act on account of financial crunch has not been appreciated by the Appellate Tribunal in correct perspective.

11. On the other hand, Mr. Prashant Sinha, learned counsel for the respondent nos.2 and 3 submitted that the writ petition preferred by the petitioner is fit to be dismissed on the ground of delay and laches as the Tribunal passed its order in January, 2008 dismissing the appeal preferred by the petitioner, but the petitioner has filed the writ application after lapse of six years without any explanation of delay. He submitted that even, otherwise,



on merit, the order passed by the Appellate Tribunal does not suffer from any illegality. He submitted that the benefit of provident fund to the employees of the petitioner is applicable since 1982 and the petitioner is also complying with the provisions of the EPF Act as far as its regular employees are concerned, but there is no reason as to why the same benefit would not be extended to the casual employees. He submitted that if the provisions of law made by the State legislature is repugnant to any provision of law made by the Parliament in respect to any matter in the concurrent list, whether passed before or after the law made by the legislature of such State, the law made by the Parliament shall prevail and the law made by the legislature of the State shall, to the extent of repugnancy, be void.

12. I have carefully considered the rival contentions and perused the impugned orders and other materials available on record.

13. Fortunately, the facts of the case are not in dispute. It is an admitted position that after the order dated 10th January, 2008 passed by the Appellate Tribunal, the petitioner did not challenge the said order for over six years. However, on 28.01.2014, he filed the present writ petition challenging the order passed by the APFC as also the order passed by the Appellate Tribunal.

14. The respondent nos.2 and 3 have filed their



counter affidavit, wherein they have raised a preliminary objection relating to delay and laches. The stand taken in the counter affidavit as regard as the delay and laches is as follows:-

“The writ petition preferred by the Petitioner is fit to be dismissed on the ground of delay and laches as the Tribunal passed its order in January, 2008 dismissing the appeal preferred by the petitioner but the petitioner has filed the writ application after lapse of six years without any explanation of delay. The writ application may not be entertained on the ground of delay and laches alone.”

15. Though, the petitioner has filed a voluminous writ application, no explanation has been given for the inordinate delay caused in challenging the order passed by the Appellate Tribunal. I further find that even in the rejoinder to the counter affidavit filed by the respondent nos. 2 and 3, the petitioner has maintained absolute silence regarding delay and laches.

16. It is true that the question of delay and laches in all kinds of cases would not carve or curtail power of a writ court to exercise its discretion. In an appropriate case, this Court may refuse to invoke its extraordinary power if there is unexplained delay on the part of petitioner to assert his right. However, delay or laches is one of the factors to be borne in mind by this Court when it exercises its discretionary powers under Article 226 of the



Constitution. The doctrine of delay and laches is not to be lightly brushed aside.

17. In **Karnataka Power Corporation Ltd. through its Chairman and Managing Director and Anr. vs. K. Thangappan and Anr.** [(2006) 4 SCC 322], the Hon'ble Supreme Court observed: *“delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudiced to the opposite party”*.

18. In **State of Maharashtra vs. Digambar** [(1995) 4 SCC 683], a three Judge Bench of the Supreme Court observed: *“power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person*



seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct”.

19. In **Chennai Metropolitan Water Supply and Sewerage Board and Others vs. T.T. Murali Babu [(2014) 4 SCC 108]**, the Supreme Court observed: *“the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, the law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and*



causes injury to the lis”.

20. On a careful perusal of the record of this case, I am of the opinion that in absence of any explanation for the inordinate delay, the petition is fit to be dismissed on the principle of delay and laches alone. However, the Court would not dismiss this case only on the principle of delay and laches and would like to consider the case of the petitioner on merits also.

21. On merits the petitioner has tried to make out a case that since its regular employees are entitled for the benefit of provident fund under the Bihar Provident Fund Rules, 1948, it is making contribution with regard to those employees. But the casual employees are impliedly not entitled for the benefit of provident fund under the Bihar Provident Fund Rules, 1948, it cannot make contribution with regard to casual employees.

22. In the opinion of this Court the proposition advanced by the petitioner is wholly misconceived. The EPF Act and the Bihar Provident Fund Rules, 1948 are mutually exclusive and Section 2(f) of the EPF Act does not make any distinction between the casual and the regular employees. The EPF Act is a social welfare legislation, which has been enacted to provide social security to the employees in the evening of their life, when they are not able to earn their livelihood due to their old age.



23. The contention of the petitioner is ironical. It is accepting the applicability of the EPF Act with regard to its regular employees, but without any justifiable reason for denying the benefit of EPF to its casual employees, it is taking shelter of the Bihar Provident Fund Rules, 1948, which has got no applicability in case of the casual employees of the establishment.

24. The Appellate Tribunal has rightly held that the EPF is a law legislated by the Parliament of India and it cannot be subject to the provisions of the Bihar Provident Fund Rules, 1948.

25. In the opinion of this Court the Bihar Provident Fund Rules, 1948 cannot have the overriding effect over the provisions of the EPF Act. I also find that the Tribunal has taken a correct view over the issue raised by the petitioner with respect to Article 254 (2) of the Constitution of India. Article 254(2) makes an exception to the provision in Article 254(1) where the State Legislature makes a law on a matter given in concurrent list and it contains provisions, which are repugnant to the earlier law made by the Parliament or in existing law with respect to that matter, then the law made by the State Legislature will prevail in that State subject to the condition that it has been reserved for consideration for the President and has received his assent.

26. In view of the above provisions of Article 254 of



the Constitution, the Bihar Provident Fund Rules, 1948 cannot be relied upon to declare the provisions of the EPF Act legislated by the Parliament in 1952 being repugnant to it.

27. Thus, I do not find any error of jurisdiction committed by the Appellate Tribunal while passing the order impugned. Both the Appellate Tribunal and the APFC while passing the orders against the petitioner acted on legal admissible evidence and they have appreciated the law and facts involved in the case properly.

28. In that view of the matter, this Court is of the opinion that the writ application deserves to be dismissed both on merits and on the principle of delay and laches. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.04.2017
Transmission Date	NA

