

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4265 of 2016

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Central Board Of Trustees, Employees Provident Fund Organization through the Assistant Provident Fund Commissioner (Legal), Regional Office, Patna having his office at R. Block, Road No. 6, P.S.- Sachivalaya, District- Patna

.... Petitioner

Versus

St. Xaviers School Dharhara, Village + P.O.+ P.S.- Dharhara, District Munger through its Director, Dr. P.P. Gupta.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 07-04-2017

This writ application has been filed by the petitioner for quashing of the order dated 03.06.2011 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi in ATA No. 442 (3) 2006 whereby the Tribunal has set aside the order passed by the 7A Authority dated 22.05.2006.

2. The petitioner is a body Corporate constituted under Section 5-A read with Section 5-C of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act') by the Government of India. This writ application has been filed through its delegate, the Assistant Provident Fund Commissioner (Legal), Employees Provident Fund Organization, Regional Office, Patna.



3. The 7A Authority initiated a proceeding for assessment of dues bearing Case No. 110 to 112/2005. Respondent establishment after hearing the parties assessed the dues against respondent establishment to the tune of Rs.70,806/- for the period April 2004 to July, 2005. In addition to that, interest under Section 7-Q of the Act for the period from June, 2004 to June, 2005 were also assessed to the tune of Rs.12,280/- vide order dated 22.05.2006.

4. The respondent establishment preferred an appeal before the Employees Provident Fund Appellate Tribunal, New Delhi bearing ATA No. 442 (3) 2006 challenging the order passed by the 7A Authority. It was submitted by the respondent establishment that it never employed more than 19 employees and the 7A Authority assessed the dues illegally on the basis of allegation that the establishment had employed more than 20 employees. The Tribunal relying on the judgment of Delhi High Court allowed the appeal holding that the Act is not applicable to the respondent establishment.

5. The said order dated 03.06.2011 has been challenged in the present writ application filed on 29.02.2016.

6. Apparently, the writ application has been preferred almost after five years of the passing of the judgment by the Appellate Tribunal. The petitioner has not offered any



explanation for the inordinate delay caused in filing the writ application.

7. It is well settled that challenge to an order passed by a quasi-judicial authority is to be made within a reasonable period of time even though no period of limitation is prescribed for exercising the powers under Article 226 of the Constitution of India.

8. It has repeatedly been held by the Supreme Court that the Courts would be reluctant to exercise its discretion under Article 226 of the Constitution of India in a case of the persons who do not approach it expediently for relief.

9. 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"*.

10. 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”.

11. 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”.

12. Having regard to the facts of the present case, I am of the opinion that in absence of any explanation for the inordinate delay caused in filing the present writ application challenging the order passed by the Appellate Tribunal, the writ application is fit to be dismissed on the principle of delay and laches alone.

13. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.04.2017
Transmission Date	NA

