

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.18276 of 2015

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1. St. Xaviers School Mokama (Since Closed) through the Secretary of its Managing Committee Fr. Alwyn D'Souza S.J, son of Late Senis D'Souza, Resident of St. Xavier's, West Gandhi Maidan, District- Patna, State of Bihar.

.... .... Petitioner/s

Versus

1. Employees Provident Fund Organization, through the Regional Provident Fund Commissioner, Bihar Regional Office, Bhavishya Nidhi Bhawan, R- Block, Patna.  
2. Assistant Provident Fund Commissioner (Compliance) Patna, Employees Provident Fund Organization, Regional Office, Bhavishya Nidhi Bhawan, R- Block, Patna- 800001, Bihar.  
3. Enforcement Officer, Muzaffarpur, Employees Provident Fund Organization, Regional Office, R- Block, Patna- 800001, Bihar.

.... .... Respondent/s

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#### Appearance :

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

For the Respondent/s : Mr. Prashant Sinha, Adv.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 21-04-2017**

Heard Mr. K.M. Joseph, learned counsel for the petitioner and Mr. Prashant Sinha, learned counsel for the respondents.

2. In the present writ application the petitioner has challenged the order dated 17.09.2015 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal (for short 'The Appellate Tribunal') in A.T.A. No. 1025(3) of 2012 whereby the Appellate Tribunal has dismissed the appeal preferred by the petitioner on the ground of non-prosecution.

3. It is submitted by the learned counsel for the petitioner that earlier also the appeal bearing A.T.A. No. 1025(3) of 2005 preferred by the petitioner before the Appellate Tribunal under



Section 7-I of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act') questioning the order dated 19.09.2012 passed by the Assistant Provident Fund Commissioner in purported exercise of powers under Section 7-A of the Act had been dismissed for non-prosecution vide order dated 11.06.2014, which was challenged before this Court vide C.W.J.C. No. 16097 of 2014. He submitted that while allowing the writ application this Court set aside the impugned order passed by the Appellate Tribunal and restoring the appeal to its original file, this Court had directed the Appellate Tribunal to consider and dispose of the appeal on merits in accordance with law, but in complete defiance to the order passed by this Court, the Appellate Tribunal dismissed the appeal once again vide impugned order dated 17.09.2015 in default.

4. Mr. Prashant Sinha, learned counsel appearing for the respondents submitted that since the petitioner failed to turn up before the Appellate Tribunal, it had no option but to dismiss the appeal in default.

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

6. The operative part of the order dated 01.05.2015 passed by this Court in C.W.J.C. No. 16097 of 20145 reads as under :-

“In the circumstances discussed the order impugned cannot be upheld and is accordingly set aside. The appeal of the petitioner stands **restored to the file of the Tribunal for its consideration**”



**and disposal on merits in accordance with law** and considering that the matter is pending since 2012, an expeditious disposal preferably within a period of three months from the date of receipt/production of a copy of this order would be expected.

This writ petition is allowed.”  
(emphasis mine)

7. In the opinion of this Court, in view of the nature of order passed by this Court, even if the petitioner was absent before the Appellate Tribunal on the date so fixed, it was expedient for the Tribunal to have disposed of the appeal on merits considering the materials available on record. That having not been done, the order impugned cannot be sustained.

8. Accordingly, the impugned order dated 17.09.2015 passed by the Appellate Tribunal in A.T.A. No. 1025(3) of 2012 is set aside. The aforesaid appeal is directed to be restored to the file of the Appellate Tribunal.

9. It is made clear that on the date so fixed, even if the petitioner fails to appear, the Appellate Tribunal would be at liberty to dispose of the appeal on merits in accordance with law.

10. With the aforesaid observations and direction, the writ application is disposed of.

(Ashwani Kumar Singh, J)

Pradeep/-

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