

SINGLE BENCH



IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT
BILASPUR

Writ Petition No 3510 of 2005

In the matter of Section 1 (3) of The Employees Provident Funds &
Miscellaneous Provisions Act 1952

and

In the matter of Section 7- I (1) of The Employees Provident Funds &
Miscellaneous Provisions Act 1952.

and

In the matter of Section 7-L (1) of The Employees Provident Funds &
Miscellaneous Provisions Act 1952.

and

In the matter of Rule 2 (c) of The Employees Provident Funds Appellate
Tribunal (Procedure) Rules 1997.

and

In the matter of Rule 17 of The Employees Provident Funds Appellate
Tribunal (Procedure) Rules 1997.

and

In the matter of: -

Petitioner

: Dr. Sanjay Tiwari
S/o Late Dr. S.K. Tiwari
Aged about 48 years
R/o Civil Lines Raipur (C.G.)



Respondents

Versus

: (1) Regional Provident Fund
Commissioner, Raipur (C.G.)

(2) The Enforcement Officer
Employees Provident Fund
Officer, Raipur (C.G.)

(3) Employees Provident Fund
Appellate Tribunal, Through
Registrar 7th Floor 60 Skylark
Building Nehru Place, New Delhi

Before : Hon'ble the Chief Justice and his companion Judges of the
Hon'ble High Court of Judicature Chhattisgarh at Bilaspur

Petition under Article 226/227 of the Constitution of India for issuance
of suitable directions, orders or writs including writs in the nature of
Mandamus, Certiorari etc.



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HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 3510 of 2005**

- Dr. Sanjay Tiwari

---- Petitioner

Versus

- Regional Provident Fund Commissioner & Ors.

---- Respondent

And**WP No. 5738 Of 2005**

- Dr.(Mrs.) Bharti Tiwari

---- Petitioner

Vs

- Regional Provident Fund Commissioner & Ors.

---- Respondent

For Petitioners : Shri Siddharth Dubey, Advocate.
For Respondents : Shri Pradeep Saxena, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****08/02/2017**

1. Both the petitions arise out of the order passed by the appellate authority dismissing the appeal preferred by late Dr. S.K. Tiwari on the ground that after his death during the pendency of the appeal,

the legal heirs did not move before the appellate authority within a period of 30 days as stipulated under Rule 17 (2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997.

2. Shri Siddharth Dubey, learned counsel for the petitioners would make two fold submissions; firstly the appellate authority should not have taken hyper-technical or pedantic approach to dismiss the application for substitution of legal heirs and secondly, the proceedings under the Employees Provident Fund & Miscellaneous Provisions Act, 1952 were drawn against the establishment M/s Tiwari Nursing Home and Diagnostic Centre, Civil Lines, Raipur and not against individual, therefore, there was no question of impleadment of legal heirs of an establishment and the late Dr. S.K. Tiwari had moved the appellate authority to protect the interest of the establishment and not his personal interest in the matter.
3. Per contra, learned counsel for the respondents would submit that even if late Dr. S.K. Tiwari was not espousing his personal cause, he being the appellant, his legal heirs should have moved the application within the stipulated time and the same having not been done, the appellate authority is fully justified in dismissing the appeal as abated.
4. I have heard learned counsel for the parties and perused the record including the applicable provisions of law.
5. The order passed by the Regional Provident Fund Commissioner, Raipur filed as Annexure-P/1 would itself indicate that the proceedings were drawn in the matter of applicability of the Employees' Provident Funds & Miscellaneous Provisions Act,

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1952 to M/s Tiwari Nursing Home and Diagnostic Centre, Civil Lines, Raipur and not against late Dr. S.K. Tiwari in person. Thus, the proceedings were drawn against the establishment and not against late Dr. S.K. Tiwari. Therefore, merely because the appeal was wrongly filed by Dr. S.K. Tiwari in his name and not in the name of establishment and upon his death, his legal heirs failed to move application for impleadment within time, the whole proceedings would not become a proceeding against Dr. S.K. Tiwari.

6. Even otherwise, in the matter of **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others** {AIR 1987 SC 1353}, it has been observed that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There should not be a presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.
7. For the foregoing, both the Writ Petitions are disposed of by permitting petitioner Dr. Sanjay Tiwari in WP No.3510/2005 to continue to prosecute the appeal preferred by late Dr. S.K. Tiwari.

Sd/-
Prashant Kumar Mishra
Judge