

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23056 of 2016

Date of decision: 19.1.2017

Chandigarh Sports Council

... Petitioner

Versus

Provident Fund Commissioner & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Deepali Puri, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

Learned counsel submits on the strength of Section 7B(5) of the Employees Provident Fund & Misc. Provisions Act, 1952 that no appeal lies against an order of the officer rejecting the application for review and therefore, writ is maintainable. The submission is correct in law and in conformity with the aforesaid Section.

On merits, this Court is satisfied that there is a grievous error in the disposal of the statutory review application. The review application was filed by the organisation without mentioning the provision of law under which it was filed. This was a super-technical view which appealed to the Assistant Provident Fund Commissioner [APFC] to out rightly dismiss the application and permit filing of another application with the defect cured. He should have known that so long as power can be traced to a statutory provision without it being mentioned in an application, the law permits ignoring such minor deficiency because the court is concerned with the substance and not the form. This everyday principle was obviously beyond the ken of the APFC. The APFC should not have

returned the review application or asked the petitioner to file a fresh one. And to my great surprise, when the fresh one was filed he ambushed the petitioner on bar of limitation and dismissed the application by playing a dirty and sneaky trick.

The order is so inherently perverse, arbitrary and illegal that without hearing the respondents, I would set aside the impugned orders and remand the case to any APFC other than Paripuran Nath [who passed the order] with a direction to the ADFC to whom the file is entrusted to act lawfully and pass a speaking order on the valuable rights and explanation furnished in the first review application clubbed with the second by restoring both by the present order and decide the same after considering all the pleas taken in the review applications and to record reasons on each of the issues raised and pass a fresh order in accordance with law.

Accordingly, the petition is allowed ex parte respondent-organization as they can possibly have no valid defence to the unlawful conduct of the APFC who passed the impugned orders, if notice is issued only to await appearance of the respondents to file a reply and delay the proceedings and to waste the further time of the Court when the defect can be cured immediately without prejudicing the claims of the parties.

A warning is issued to the author of the impugned orders never to pass such unlawful orders subverting justice and in case another such matter comes up before the Court he may expose himself to passing of severe strictures against him.

A copy of this order be sent to the Regional Provident Fund Commissioner, Chandigarh for placing the file in remand before any

other Assistant Provident Fund Commissioner and ensure that justice is not only done within the law but seen to be done. This order is not to be taken as an expression of opinion of the Court on the merits of the case nor will it influence the mind of the new APFC and he would act independently. The facts have neither been read nor noticed and this order is confined only to restore the path of justice.

(RAJIV NARAIN RAINA)
JUDGE

19.1.2017

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Whether speaking/reasoned *Yes*

Whether Reportable: *No*