

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (L) No. 218 of 2018**

Indira Gandhi National Open University Through Regional Director,
Regional Center , I G N O U Complex, Kachna, Raipur, Chhattisgarh

---- Petitioner**Versus**

1. Union Of India Through Ministry Of Labour, Ministry Of Labour And Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001
2. Assistant Provident Fund Commissioner, Block D, Scheme No. 32, Indira Gandhi Commercial Complex, Pandri, Raipur, Chhattisgarh 492004

---- Respondents

For Petitioner	:	Shri Harsh Wardhan, Advocate
For Respondent no.1	:	Shri Bhupendra Singh, Advocate
For Respondent no.2	:	Shri Sunil Pillai, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****01/10/2018**

Challenge in the present writ petition is to the order Annexure P-11 dated 11.07.2018 as also the subsequent order Annexure P-13 dated 18.09.2018 under Section 7A as well as 8B & 8F of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (for short 'EPF Act').

2. Counsel for the petitioner submits that under the provisions of the EPF Act there is a provision for appeal under Section 7(I) and the petitioner preferred an appeal on 24.04.2018 along with an application for interim relief as also an application for relaxing the mandatory deposit. He submits that the CGIT that is the Appellate Tribunal was not functional for a pretty long time and on account of the non availability of the Presiding Officer, the

appeal could not be taken up for admission. Meanwhile, the respondents have initiated coercive steps for recovering the amount from the petitioner as assessed vide Annexure P-11 dated 11.07.2018. According to the counsel for the petitioner, this has forced the petitioner to approach this Court under Article 226 of the Constitution of India seeking protection of the interest of the petitioner till the appeal is finally taken up by the appellate authority on a Presiding Officer being appointed.

3. Counsel appearing for respondent no.2, however, opposing the petition submits that the writ petition may not be entertainable at this juncture for the reason that the appeal which the petitioner had preferred before the Appellate Authority itself was beyond the prescribed period of limitation under the Rules. He submits that since the petitioner had not challenged the original order of assessment under Rule 7A of the EPF Act promptly, the respondents in accordance with the statutory provisions initiated steps for enforcement of the order passed under Section 7A and therefore, there is no scope of interference.

4. Perusal of the record would show that the petitioner along with the appeal had also preferred an application for condonation of delay which again is permissible under the provisions of the EPF Act. Once when the statute provides a remedy of appeal with a provision for condoning the delay if the appeal is not filed within the stipulated period, the remedy so availed by the aggrieved person cannot be permitted to get frustrated. Moreover, a right to appeal is a fundamental right which is available to the petitioner under the Statute itself. Once when an appeal is filed before the appellate authority and if the appellate authority is not functional for the reason of either the post lying vacant or the non availability of the Presiding Officer or for any other reason, the petitioner/aggrieved person cannot be blamed for the same and the petitioner's right of appeal cannot be

permitted to be get frustrated only on account of the inaction on the part of respondent no.1 in not filling up the vacancies of the appellate authority promptly.

5. Given the aforesaid factual scenario, this Court is of the opinion that ends of justice would meet if the petitioner is directed to deposit 50% of the amount awarded as per the assessment Annexure P-11 dated 11.07.2018 within a period of 30 days from today and on the deposit of the said 50% amount, respondent no.2 shall be restrained from initiating coercive steps for recovery of the balance amount from the petitioner till the IAs which have been filed along with the appeal before the appellate authority are decided.

6. With the aforesaid observation, the writ petition stands disposed of.

**Sd/-
(P. Sam Koshy)
JUDGE**