

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.1608 OF 2018

ORDER:

Heard Smt I.Sujatha, learned counsel for the petitioner, Sri K.Lakshman, learned Assistant Solicitor General appearing for respondent No.1, and Sri B.Narasimha Sharma, learned Standing Counsel appearing for respondent Nos.2 to 4, apart from perusing the material available before this Court.

2. The Assistant Provident Fund Commissioner, Sub-Regional Office, Warangal, respondent No.2 herein, passed an order under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for levy of penal damages for the period from 08.11.2004 to 28.02.2014 *vide* proceedings, dated 11.05.2017, asking the petitioner to pay a sum of Rs.6,14,684/- plus Rs.3,36,045/- towards interest. As against the said order passed by respondent No.2, the petitioner herein filed a statutory appeal on 27.10.2017 under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Along with the said appeal, petitioner herein also filed an application under Section 5 of the Limitation Act, 1963 before respondent No.1/appellate authority seeking condonation of delay of 103 days in filing the said appeal. Respondent No.1 herein, by way of an order under challenge, dated 26.12.2017, dismissed the said application and consequently, dismissed the appeal filed by the petitioner herein. This writ petition challenges the validity and legal sustainability of the said order.

3. It is contended by the learned counsel for the petitioner that respondent No.1/appellate authority grossly erred in rejecting the appeal filed by the petitioner herein on the ground of delay since valuable rights of the petitioner are involved. It is the further submission of the learned counsel that having regard to the merits of the appeal, the appellate authority ought to have condoned the delay and ought to have afforded opportunity to the petitioner herein to prosecute the appeal on merits. It is also the submission of the learned counsel that pursuant to the order impugned, the respondents herein have recovered entire amount from the petitioner.

4. On the contrary, it is submitted by Sri B.Narasimha Sharma, learned Standing Counsel for respondent Nos.2 to 4, that there is no infirmity nor there exists any illegality in the impugned order and in the absence of sufficient cause shown by the petitioner herein in the affidavit filed in support of the application filed under Section 5 of the Limitation Act, respondent No.1/appellate authority is perfectly justified in rejecting the application.

5. In the above background, now the issue that emerges for consideration of this Court is:

“Whether the petitioner herein is entitled for any relief from this Court under Article 226 of the Constitution of India?”

6. The material available before this Court discloses that as against the order passed by the primary authority under Section 14-B read with Section 7Q of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, the petitioner herein filed an

appeal before the appellate authority/respondent No.1 herein on 27.10.2017. It is also an admitted fact that along with the said appeal, petitioner herein filed an application under Section 5 of the Limitation Act seeking condonation of delay of 103 days in filing the appeal. In the affidavit filed in support of the application, the petitioner herein, at paragraph Nos.11 and 12 stated as follows:

“11. It is submitted that, thus, the petitioner deposited and transferred the amount towards PF Contributions in time for the period 2010 to 2011, as per the provisions of EPF & MP Act 1952, through respondent No.4 by way of Challans, the proof of the same, the 22 challans are filed herewith for the kind perusal of this Hon’ble Tribunal. Thus, the petitioner cannot be made liable for penal damages and interest for such belated payments and crediting of the amount towards P.F. contributions into the EPF account which was made by respondent No.4.

12. It is submitted that, with regard to payment of penal damages and interest, the petitioner on and often updated the issue with the respondent No.4 and requested to pay the same and coordinated with respondent No.1 about those updates. The petitioner was waiting with a fond hope that the issue would get settled soon, as the respondent No.4 never denied. In the meanwhile the respondent No.1 issued Prohibitory order dated 06.9.2017 against petitioner as well as against respondent No.5. Then the petitioner came to Hyderabad and filed this appeal.”

7. In paragraph Nos.9 and 10 of the writ affidavit, it is stated as follows:

“9. It is submitted that, then the respondent No.5 informed the petitioner that the amount of P.F. contributions received from employers would be forwarded to Nayeemnagar branch of SBI, Warangal, who in turn credits that amount into the account of

respondent No.2. When contacted Nayeemnagar branch, it has confirmed that even it has not received such amounts from respondent No.5.

10. It is submitted that, after several communications and co ordination for a period of two years, the respondent No.5 deposited the same amount of Rs.9,32,270/- on 17.05.2013 for the same period from March 2010 to December 2011 on behalf of petitioner and handed over the receipts of challans in original to petitioner as a proof of deposit. Thereafter the said amount was transferred into the account of respondent No.2 thus such payment has become belated payments.”

8. On the ground that the appeal was filed beyond the period of limitation, respondent No.1/appellate authority rejected the appeal filed by the petitioner herein. The memorandum of grounds of appeal filed before the appellate authority is also placed on record by the learned counsel for the petitioner. It is submitted, in the said grounds of appeal, that the petitioner herein has urged a number of contentions.

9. Having regard to the nature of controversy and the rights involved and having regard to the fact that the amount covered by the order has already been recovered and in view of the averments in the affidavit filed in support of the writ petition and the affidavit filed before respondent No.1/appellate authority in support of the petition filed under Section 5 of the Limitation Act, this Court is of the considered opinion that the ends of justice would be met if the petitioner herein is given an opportunity to prosecute the appeal on merits. Since the appeal is a statutory remedy, this Court is not inclined to deny the said relief to the petitioner herein.

10. For the aforesaid reasons and since the delay is also not exorbitant, the Writ Petition is allowed, setting aside the order, dated 26.12.2017, in EPF/AP.No.4/2017 passed by respondent No.1/appellate authority and delay in filing the appeal is condoned and the appeal consequently stands restored to file, and respondent No.1/appellate authority shall consider the appeal on merits strictly in accordance with law after giving notice to all the stakeholders. There shall be no order as to costs.

11. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.V.SESHA SAI

Date: 23.01.2018
AMD



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