

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.5301 of 2015

ORDER:

Heard the learned counsel for the petitioner as well as the learned Standing counsel appearing for the respondent organization.

The prayer sought in the writ petition is as under:

“... to issue an appropriate writ or order more particularly one in the nature of a Writ of Certiorari declaring that the order dated 30.05.2012 issued by the 3rd respondent in pursuance to the proceedings under section 7A of the Employees Provident Fund and Miscellaneous Provisions Act 1952 on an estimation of the strength of the employment of petitioner reaching 480 without any documentary support or evidence on record has resulted to an illegal assessment of claim of Rs.35,82,612/- against petitioner since the 3rd respondent has no authority to pass orders in respect to establishments having employees less than 250 numbers on record, wherein at no point of time the strength of the employment of the petitioner has touched/exceeded minimum prescribed limit of 250 for transfer of the case of petitioner to 3rd respondent for exercising the powers by 3rd respondent conferred on it under Section 7A of the E.P.F. and M.P. Act, 1952 and thus quash/cancel the order dated 30.05.2012 of 3rd respondent declaring the same as arbitrary, perverse, illegal and without Jurisdiction.”

Learned Standing counsel appearing for the respondent organization submits that the impugned orders passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, “the Act”) is appealable under Section 7-I of the Act. When statutory appeal is provided, the present writ petition, as filed, is not maintainable, more so, when it is not coming within the purview of the three exceptions carved out for invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

Learned counsel for the petitioner would submit that at the time of filing of the writ petition, since the Tribunal was not functioning, the petitioner was constrained to file the present writ petition. Now that the Tribunal is functioning, he seeks liberty of this Court to file an appeal before the appellate authority.

Acceding to the said request, the writ petition is disposed of with a direction to the petitioner to file an appeal as contemplated under Section 7-I of the Act before the appellate authority within three weeks from the date of receipt of a copy of this order. On such filing of the appeal, the appellate authority is directed to dispose of the same as per law. It is needless to observe that till the appeal is filed, the respondent organization is directed not to take any coercive steps against the petitioner. No costs.

Miscellaneous petitions, if any, shall also stand disposed of.

P. KESHAVA RAO, J

Date: 28.11.2018.
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