IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

227 **CWP-24993-2015 (O&M)**
Date of decision:22.02.2018

Saint Kabir Public School

...Petitioner

Versus

Employee's Provident Fund Organization & Ors.

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Vivek Salathia, Advocate for the petitioner.

Mr. Sanjay Tangri, Advocate for the respondents.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged interim order of the Employees' Provident Fund Appellate Tribunal (for short 'EPFAT') dated 09.10.2015 (Annexure P-1).

2. Petitioner-Institute is covered under Employees' Provident Fund & Miscellaneous Provision Act, 1952 (for short 'EPF Act'). Respondent-department determined EPF amount. Thereafter, due to delay in remiting EPF amount proceeded to pass order under Section 14-B of the EPF Act on 03.06.2015 while levying the damages. Feeling aggrieved by the order dated 03.06.2015 petitioner presented appeal under Section 7-I of the EPF

Act before EPFAT. EPFAT passed interim order directing the petitioner to deposit 40% of the determined amount with the Tribunal within 30 days of the order. Hence present appeal insofar as challenge to interim order dated 09.10.2015 passed by EPFAT, New Delhi.

3. Learned counsel for the petitioner submitted that Tribunal cannot insist for pre-depositing 40% in respect of appeal preferred against order passed under Section 14-B. He relied on provisions of the EPF Act like Sections 7-A, 7-I and 7-O. He also relied on Rule 7 of EPF Appellate Tribunal (Procedure) Rules, 1997. In support of his contention that tribunal cannot insist for pre-deposit he relied on the following decisions:-

1. ***Sri Naga Nanthana Mills Ltd., Vakkananankundu Post, Aruppukottai Taluk, Virudhunagar District, through its Director versus The Presiding Officer, Employees Provident Fund Appellate Tribunal and another*** [W.P.(MD)No.18195 of 2013]
2. ***M/s Bedi & Bedi Associates (Regd.) versus Central Board of Trustees*** [W.P.(C)8576/2015 & C.M.No.18547-48/2015]
3. T.R.M. Public School versus Asstt. Provident Fund Commissioner Employees Provident Fund Organization [W.P.(c) No. 9268/2014.
4. ***Old Village Industries Ltd versus Asstt. Provident Fund Commissioner, Employees' Provident Fund Organization and another*** reported in 2004 (115)DLT 510.

He has also pointed out and distinguished with reference to decision cited by counsel for the respondents ***M/s Talaguppa Playwood Products (P) Ltd. Versus Employees Provident Funds Appellate Tribunal, New Delhi and another*** reported in 2006 LIC 1015 with reference to later decision of the Delhi High Court. In view of the principle laid down in the aforesaid decision in terms of the direction dated 09.10.2015 to pre-deposit 40% for entertaining the appeal may not be correct. Therefore, Annexure P1 is liable to be set aside.

4. Per contra, learned counsel for the respondents while resisting the petitioner's contention specifically pointed that Annexure P1 dated 09.10.2015 is an admitted appeal. As an interim measure EPFAT directed the petitioner to deposit 40% of the determined amount with the Tribunal within a period of 30 days from the date of order. Therefore, it is not relating to pre-deposit for the purpose of entertaining appeal under Section 7-I of EPF Act against the order under Section 14-B of the EPF Act. It was further contended that pre-deposit can be insisted even for the orders passed under Section 14-B in view of the language employed in 7-A(b) of the EPF Act. In support of the said contention he relied on decision passed in ***M/s Talaguppa Playwood Products (P) Limited's*** case (supra).

5. Heard learned counsel for the parties.

6. Crux of the matter in the present petition is whether EPFAT by interim order dated 09.10.2015 has directed the petitioner to pre-deposit 40% of the determined amount for the purpose of entertaining the appeal or not or is it relating to as interim measure? During pendency of the appeal petitioner was directed to desposit 40% of the determined amount. Extract of the order of the EPFAT dated 09.10.2015 reads as under:-

> "*The present appeal has been filed by the appellant under Section 7-I of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter*

referred to as 'the Act'), challenging the orders dated 03.06.2015 (in short impugned order) passed by the respondent under Section 14B and 7-Q of the Act.

Along with appeal, application for condonation of delay also filed on behalf of appellant.

Arguments on application for condonation of delay heard. Keeping in view facts mentioned in the application and fact that appeal file within 120 days of impugned order so delay is condoned.

At this stage, counsel for appellant requested for stay of impugned order.

Admittedly, respondent is empowered to assess damages and interest against appellant establishment, if there is delay in remittance of PF contributions. Admittedly, there is dely in remittance of PF contributions and such delay is attributed to appellant only. But keeping in view submissions made by counsel for appellant regarding manner of calculation of asseessment, respondent is restrained from recovering more than 40% of the assessed amount, till further orders.

Now come upon 02.02.2016.

Meantime, if respondent intends to file counter reply, same may be filed within 30 days of this order with the Registry, in advance copy to appellant.

Sd/- (Harish Gupta),
Presiding Officer. EPFAT"

Perusal of the aforesaid order it is evident that appellant/petitioner was heard. Appeal is admitted for consideration. Further petitioner was directed to deposit 40% of the determined amount. In view of the admission of the appeal it is evident that EPFAT has entertained the petitioner's appeal. Consequently, one cannot draw inference that directing for deposit 40% of the determined amount relates to pre-deposit for entertaining the appeal. Therefore, petitioner's contention that by virtue of interim order dated 09.10.2015 EPFAT has insisted for pre-deposit 40% of the determined amount is untenable and cannot be accepted. Once the issue is not relating to pre-deposit amount for entertaining appeal under Section 7-I of the EPF Act, question of considering the issue relating to pre-deposit in respect of an appeal under Section 7-I against order passed under Section 14-B of the EPF Act do not arise in the present petition. Accordingly, petitioner has not made out a case in respect of interference with order of the EPFAT dated 09.10.2015 (Annexure P1).

7. Accordingly, CWP stands dismissed.

(P.B.BAJANTHRI)
JUDGE

22.02.2018
pooja saini

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No