IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12027 OF 2018

M/s Jalgaon District Central Cooperative
Bank Ltd. … Petitioner
Versus
The Central Provident Fund Commissioner
and others … Respondents

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Mr. V. N. Upadhye, Advocate for petitioner.
Mr. K. B. Chaudhari, Advocate for respondent Nos. 1 and 2.
Mr. S. B. Rathod, Advocate for respondent No.3.
Mr. S. S. Kulkarni, Advocate for respondent No.4.
Mr. D. B. Thoke, Advocate for respondent No.5.

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CORAM : M. S. KARNIK, J.
DATED : 19th AUGUST, 2019

PER COURT :-

1. Heard learned counsel for the parties.

2. The challenge in this petition is to an order dated 24.04.2018 passed by the Presiding Officer, Central Government Industrial Tribunal, Nagpur, dismissing the appeal of the petitioner filed under Section 7 of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (for short 'EPF & MP Act, 1952') on the ground that there being a delay of six days in filing the appeal and that the

petitioner bank cannot be said to be an aggrieved person to file an appeal.

3. Learned counsel for the petitioner invited my attention to the impugned order and contended that there was sufficient explanation in the application made to condone the delay of six days.

4. Learned counsel for the respondents on the other hand invited my attention to the prayers made in the appeal. He would submit that several orders are under challenge and in respect of different orders the period of delay being different, delay should have been properly explained in the context of the orders under challenge.

5. So far as the aspect of the petitioner being an aggrieved person is concerned, learned counsel for the petitioner would submit that the loan was advanced by the petitioner to respondent No.3 - sugar factory. The petitioner bank auctioned the sugar factory under the Secutitization Act, 2002. The petitioner bank took possession of respondent No.3 - sugar factory and auctioned the sugar factory for recovery of the loan from the sale proceeds. Respondent No.5 is the auction purchaser.

6. Learned counsel for the petitioner would invite my attention to the order passed by the Assistant Provident Fund Commissioner dated

31.08.2010 in respect of respondent No.3 - sugar factory, in which it has been clearly held that it is the petitioner bank that shall be deemed to be an employer in default under Section 8(x) of the EPF & MP Act, 1952. In this view of the matter, it cannot be said that the petitioner is not an aggrieved person. The order of the tribunal rejecting the appeal on this ground is set aside.

7. Before the tribunal, the petitioner had challenged the orders dated 21.12.1998, 01.04.2005, 27/30.01.2009 for recovery of provident fund dues of the employees of respondent No.3 - sugar factory, which includes damages and penalties also.

8. Learned counsel for the petitioner submits that though the Central Government Industrial Tribunal has proceeded on the footing that the delay is only of six days in filing the appeal, in view of the objections raised by the learned counsel for the P. F. department, he seeks leave to file an comprehensive affidavit explaining the delay caused in filing the appeal.

9. In this view of the matter, in my opinion, the application for condonation of delay needs to be reconsidered by the Central Government Industrial Tribunal.

10. The impugned order of the Tribunal is set aside. The tribunal, to hear the application for condonation of delay afresh after an additional affidavit is filed explaining the delay in view of the objections raised by the learned counsel for the P. F. department. The said affidavit explaining the delay to be filed within a period of four weeks from today.

11. Needless to mention that the P. F. department would always be at liberty to file a counter to the said affidavit.

12. The tribunal is requested to decide the proceedings expeditiously and preferably within a period of six months from today.

13. The writ petition is allowed in the above terms and disposed of with no order as to costs.

[M. S. KARNIK, J.]

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