

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4181 OF 2019

M/s.Shetkari Shikshan Prasarak Mandal .. Petitioners
Vs.
Employees Provident Fund Organization and ors. ..Respondents

Mr.Pandit Kasar a/w Mr.F.A.Wasif i/b Shri Chetan Alai, for the
Petitioners.

Mr.Suresh Kumar a/w Ms.Priyanka Tiwari, for Respondents.

CORAM : M.S.KARNIK, J.

DATE : 04th APRIL, 2019

P.C. :

. Rule. Rule is made returnable forthwith by consent
of the parties.

2. Heard learned Counsel for the parties. By this
Petition filed under Articles 226 & 227 of the Constitution of
India, the petitioners are challenging the order dated
14/03/2019 passed by the Central Government Industrial

Tribunal No.1, Mumbai dismissing the Appeal filed by the petitioners against the order dated 20/03/2018 passed under section 14-B and 7-Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'Act' for short). The Tribunal by the impugned order has dismissed the Appeal on the ground that as the impugned order was dispatched to the petitioners on 27/03/2018 by speed post, the Tribunal came to the conclusion that the Appeal is barred by limitation. The Tribunal was of the opinion that it has no jurisdiction to condone the delay beyond the period of 120 days as provided under sub-rule 2 of Rule 7 of the Employees Appellate Tribunal (Procedures) Rules, 1997.

3. The contention of the learned Counsel for the petitioners is that the order dated 20/03/2018 was not received by them. In fact, he invited my attention to the averments in the Petition and also at page 33 which is an application made under the Right to Information Act, wherein it is indicated that the order dated 26/04/2018 for recovery is not received by them.

This recovery appears to be pursuant to the order dated 20/03/2018. Now the contention is raised by the petitioners that the order dated 20/03/2018 was never received by them.

4. Learned Counsel for the respondent – Shri Sureshkumar would contend that the respondents specifically pointed out to the Tribunal that the order dated 20/03/2018 was dispatched to the petitioners by speed post. In fact, true copy of the dispatch register was also produced. He would therefore submit that the petitioners have not raised any defence that they have not received the order dated 20/03/2018 before the CGIT or that the dispatch is not on correct address of the petitioners.

5. Be that as it may, learned Counsel for the petitioners would vehemently urge that the petitioners never received the impugned order dated 20/03/2018. He requested for an opportunity to raise appropriate defence about non receipt of the order dated 20/03/2018 before the Tribunal in the interest

of justice. On being asked whether the petitioners would deposit an amount of Rs.4,28,790/- with the respondents, learned Counsel for the petitioners, on instructions, submitted that they are willing to deposit the amount with the respondents within a period of 6 weeks from today to show their bonafide.

6. In this view of the matter, in the interest of justice with a view to give an opportunity to the petitioners to raise appropriate plea before the Tribunal that the order dated 20/03/2018 was not received by them, the matter needs to be remitted back to the Tribunal. Hence, the following order.

ORDER

- i) The impugned order is quashed and set aside.
- ii) The matter is remitted back to the Tribunal to decide it afresh on the question of delay and also on merits in the event the CGIT is satisfied with the plea raised subject to the petitioners depositing amount of Rs.4,28,790/- with the respondents – PF Authority within a period of 6 weeks

from today.

iii) It is made clear that deposit of this amount is condition precedent for the Tribunal to hear the Appeal afresh.

iv) It is further clarified that in the event the petitioners fail to deposit this amount with the respondents, the order passed by the Tribunal would stand revived. All contentions are kept open.

7. Rule is partly made absolute in the above terms. No order as to costs.

(M.S.KARNIK, J.)