

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 132 OF 2016

Mulibai Charkha Shikshan Prasarak Mandal thr. President
Haribhau Natthoba Kshirsagar

VS.

Assistant Provident Fund Commissioner, Akola

Office Notes, Office Memorandum of Coram,
orders
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's

Shri. A. R. Deshpande, counsel for petitioner.
Shri. H. N. Verma, counsel for respondent.

CORAM : MANISH PITALE J

DATED : 06.11.2019

By this writ petition the petitioner establishment has challenged order dated 12.05.2014 passed by the respondent authority under Section 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

2. The respondent authority has raised a preliminary objection that the present writ petition is not maintainable since alternative remedy of filing an appeal under Section 7-I of the aforesaid Act, is available to the petitioner establishment. It is an admitted position under the said provision that, an appeal is to be filed within a period of 60 days from the date of order passed under Section 7-A of the aforesaid Act and that the appellate authority can condone delay

upto further 60 days, if sufficient reasons are demonstrated by the appellant. Thus, the period of limitation for filing appeal has admittedly expired in the present case.

3. In this backdrop, the learned counsel appearing for the petitioner contended that the present writ petition could be entertained particularly, when the petitioner establishment has admittedly deposited the entire amount as directed by the respondent authority in the order passed under Section 7-A of the said Act. Certain submissions were sought to be made to demonstrate the error in the order passed under Section 7-A of the Act.

4. This Court in the case of **M/s.Balaji Ginning Factor vs. Assistant Provident Fund Commissioner [Writ Petition No.2190/2016 decided on 03rd September 2019]** had the occasion of considering the question as to whether writ petition filed by a petitioner similarly situation in the present petition could be held to be maintainable on the ground that alternative remedy of filing an appeal under Section 7-I of the aforesaid Act was not available, in view of the fact that the period of limitation had already expired. In the said judgment this Court categorically held that the aforesaid ground could not be pressed into

service to claim that the writ petition was maintainable. It was held that in the face of the alternative remedy available, the writ petition was liable to be dismissed.

5. The aspect of exceptions to the rule of alternative remedy was also discussed and it was laid down that if the order made subject matter of challenge could be said to be an order passed without jurisdiction, then the writ petition would be maintainable, but if the order under challenge was merely sought to be demonstrated as erroneous, no writ petition would lie.

6. In this situation, the learned counsel appearing for the petitioner sought to rely upon judgment and order dated **28.10.2015** passed by this Court in **Writ Petition No.1002/2014, Nagar Vachnalaya, Yavatmal vs. Assistant Provident Fund Commissioner, Akola** to contend that when the petitioner in the present case had indeed deposited the entire amount, in the interest of justice, the petition could be entertained and the matter may be remanded to the respondent authority for fresh consideration, as was done in the said cited judgment and order of this Court.

7. Perusal of the said order would show that in the said case the respondent authority had proceeded *ex-parte* and order was passed against

the establishment therein. In the present case, it is an admitted position that the petitioner was duly issued notice and after sufficient opportunity was granted, the order under Section 7-A of the aforesaid Act was passed. This is clearly a distinguishing feature and therefore, the said judgment and order passed by this Court cannot come to the aid of the petitioner.

8. In view of above, the present petition is held to be not maintainable and accordingly it is dismissed.

JUDGE

KOLHE.