

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2019

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.28363 of 2013
and
W.M.P.No.21311 of 2017

The Managing Director,
M/s.A & F Overseas Trade Limited,
Uruvaiyar Village, Mangalam Road,
Mangalam Post (vila Villianur),
Pondicherry-605 110. Petitioner

-vs-

- 1.The Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Sub-Regional Office,
No.101, 100 Feet Road, Cholan Nagar,
Olandai, Keerapalayam,
Puducherry-605 004.
- 2.The Assistant Provident Fund
Commissioner (Comp),
Employee's Provident Fund Organisation,
Sub-Regional Office,
No.101, 100 Feet Road, Cholan Nagar,
Olandai, Keerapalayam,
Puducherry-605 004.
- 3.The Secretary,
Ministry of Labour & Employment Department,
Government of India, Shram Shakti Bhawan
Rafi Marg., New Delhi-110001.

(R-3 suo motu impleaded as per order of Court
dated 06.11.2019 in W.P.No.28363 of 2013) Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the
records relating to the orders of the 2nd respondent in
proceedings No.TBM/SRO/PONDY/Recy/PC/364/2013 dated 23.09.2013
and No.TBM/SRO/PCY/PC-364/Comp/2010 dated 31.05.2010, quash the
same.

For Petitioner : Mr.S.Ravindran,
Senior Counsel
assisted by Mr.P.Nehru

For Respondents: Ms.V.J.Latha

ORDER

The order dated 31.05.2010 passed under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF & MP Act") and the subsequent order of review dated 23.09.2013 are under challenge in the present writ petition.

2.The petitioner, a company registered under the provisions of the Companies Act, 1956, had established a factory at Uravaiyary Village, Mangalam Road, Pondicherry. The petitioner company is engaged in the manufacture of shoe uppers. The company was covered under the EPF & MP Act from the year 1992. The petitioner claims that they are regularly paying contributions for the employees' share as well as employer share. On account of certain genuine reasons, the company was unable to pay the contribution, since the company has incurred losses. A reference has also been made to the Board of Industrial and Financial Reconstruction (BIFR) and a case has been registered in Case No. 359/2000. The company was declared as a Sick Industrial Company and IDBI was appointed as the operating agency under Section 17(3).

3.Learned Senior Counsel for the writ petitioner made a submission that on 17.09.2002, the Assistant Commissioner of Provident Fund issued an order under Section 7-A of the EPF & MP Act wherein, he directed the petitioner company to remit the contributions of Employees Provident Fund, Pension Fund and the Employees Deposit Linked Insurance in respect of trainees enrolled from the date of engagement. Aggrieved by the said order, the petitioner company filed an application for review under Section 7-B of the EPF & MP Act on the ground that the order has been passed without hearing the petitioner and the order is not a speaking one. The review petition was taken on file by the 1st respondent on 06.10.2003 and after a hearing fixed by him, the Enforcement Officer filed a report stating as follows:-

"(i) the Establishment is not having certified standing order. The establishment has filed the draft standing order for certification by the Regional Labour Commissioner, Pondicherry on 28.08.2002 and is yet to be certified by the Labour Department. However, during the pendency of certification, the establishment is following model standing order;

(ii) the trainees are given appointment order specifying the terms of appointment;

(iii) during the period of training, the trainees are paid stipend ranging from Rs.600/- to Rs.800/-. The trainees will cease on completion of the prescribed training period of 2½ years and there is no guarantee of employment in the organization on completion of the training;

(iv) the trainees are not liable to contribute to ESI;

(v) the difference in the monthly stipendiary allowance is mainly due to the cut in the stipend for the days of their absence. Though the appointment order states that consolidated stipend will be paid during the period of training, there is no mention of increment in the stipend during the subsequent days of training;

(vi) the period of training is for 2½ years for all cadres of trainees;

(vii) the trainees are not paid bonus or attendance incentives; and

(viii) the list of trainees who are enrolled in September, 2002 shows that no trainees are engaged for more than 2½ years."

4. In view of the report, the petitioner wanted some time to file counter and accordingly, the enquiry was adjourned. On 23.02.2004, the petitioner made a request to the 1st respondent to furnish a copy of the report so as to participate in the enquiry. Earlier, on 09.01.2004, the Assistant Commissioner had inspected the factory and conducted an enquiry with few trainees and other employees and also verified certain records. Accordingly, the Assistant Commissioner had also submitted a report.

5. The contentions of the writ petitioners are that remuneration was being paid to the trainees in the form of stipend based on actual attendance and that the person would be receiving a certificate of proficiency which would enable him to secure employment in any similar industry.

6. The learned Senior Counsel reiterated that the trainees engaged by the writ petitioner are not covered under the EPF & MP Act and they were receiving stipend during the training period and therefore, the exemption clause under the EPF & MP Act would be applicable in respect of payment of contributions.

7. Learned Senior Counsel for the petitioner is of an opinion that there was no complete adjudication in respect of the issues by the authorities concerned and certain inspections as well as enquiry conducted were not revealed and therefore, the case is to be remanded back to the authority concerned for re-adjudication. In the event of re-adjudication, the writ petitioner would be in a position to establish certain facts and

circumstances so as to prove that they have engaged trainees and not workmen.

8.The learned Senior Counsel, in this regard, has stated that in the absence of any complete adjudication by the authorities competent, the writ petition would be maintainable and this Court, under Article 226 of the Constitution of India, is empowered to direct the authorities to re-hear the matter by affording opportunity to the parties concerned for adjudication of the disputed fact. The disputed fact is that whether the persons engaged by the writ petitioner are the employees or trainees. The writ petitioner was not provided with an opportunity and therefore, the case is to be remanded.

9.When this Court raised a question as to whether the writ petitioner filed an appeal under Section 7-I of the EPF & MP Act, the learned Senior Counsel answered by stating that no appeal has been preferred. However, they are ready to prefer in the event of condoning the delay in filing such an appeal within the period stipulated in the rules. As per the rules, time limit prescribed for filing an appeal is 60 days and the Tribunal by exercising the discretionary power, can condone the delay of further 60 days. Thus, totally 120 days is the outer time limit for preferring an appeal under Section 7-I of the EPF & MP Act.

10.The learned Senior Counsel with reference to the limitation for preferring an appeal made a submission that the Hon'ble Supreme Court of India in the case of P.Sarathy vs. State Bank of India [MANU/SC/0422/2000] held as follows:-

"9. Deputy Commissioner of Labour (Appeals), Madras, which is the Authority constituted under the Tamil Nadu Shops and Establishments Act, 1947 has the jurisdiction to adjudicate upon an order by which the services of an employee are terminated. He has the jurisdiction to decide whether the order of dismissal, passed by the employer, was valid or it was passed in violation of any statutory rule or principles of natural justice. Under Section 41(3), the order passed by him is binding on the employer as also on the employee. Thus, the Deputy Commissioner of Labour (Appeals) may not be a "civil court" within the meaning of the Code of Civil Procedure but it is definitely a "court".

10.

11. Sub-section (1) of Section 14, Limitation Act, provides as under:- "(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due

diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

12. It will be noticed that Section 14 of the Limitation Act does not speak of a "civil court" but speaks only of a "court". It is not necessary that the court spoken of in Section 14 should be a "civil court". Any Authority or Tribunal having the trappings of a court would be a "court" within the meaning of this Article."

11. Apart from the above judgment, the learned Senior Counsel also relied on the judgment of this Court wherein, such liberty was granted to the parties concerned to prefer an appeal under Section 7-I of the EPF & MP Act by condoning the delay. In other words, the High Courts under Article 226 of the Constitution of India had condoned the delay in preferring the appeal under Section 7-I of the EPF & MP Act and permitted the parties to file an appeal and adjudicate the issues on merit. When the High Courts, on earlier occasions, had passed such orders condoning the delay for preferring an appeal enabling the parties to file an appeal under Section 7-I of the EPF & MP Act, similar benefit is to be extended to this petitioner also.

12. The learned Senior Counsel reiterated that the present writ petition is a fit case where a complete adjudication is required and therefore, the petitioner is entitled for an opportunity at least before the Appellate Court in an appeal to be filed. In this regard, the delay occurred is on account of the pendency of the writ petition before this Court and therefore, this Court has to condone the delay enabling the writ petitioner to prefer an appeal under Section 7-I of the EPF & MP Act.

13. The learned Senior Counsel further made a submission that with reference to Section 2(f) of the EPF & MP Act, the trainees engaged by the writ petitioner company are falling under the model standing orders of the establishment and therefore, they are exempted from the provisions of the EPF & MP Act and accordingly, the writ petitioner company is not liable to pay the contributions under the EPF & MP Act. However, it is not established that the company has the benefit of certified standing orders during the relevant point of time.

14. Learned counsel appearing on behalf of the respondent Organization intervened by stating that the standing orders

indicate certified standing orders and as per their counter statement, the company was not possessing any such certified standing orders during the relevant point of time.

15. Learned counsel appearing on behalf of the respondents disputed the contentions by stating that the writ petitioner company was evading the contributions under the guise of designating the regular employees as 'trainees'. The inspection by the Enforcement Wing of the Organisation traced out such irregularities and even the Assistant Commissioner, who inspected the premises of the writ petitioner identified that the employees working in the company are termed as "trainees" only with a motive to evade contributions under the EPF & MP Act. Such reports submitted by the Enforcement Wing as well as the inspection report were relied upon by the authorities concerned, while passing the final orders under Section 7-A of the EPF & MP Act.

16. Learned counsel appearing on behalf of the respondents relying on the counter affidavit filed by the 2nd respondent made a submission that the writ petitioner company was covered under the provisions of the EPF & MP Act. The Enforcement Officer of the respondent Department conducted inspection of the petitioner establishment and found that the petitioner had not enrolled certain employees who were termed as "trainees" from 03/2000 to 11/2001. The petitioner also defaulted in payment of EPF dues for the period from 07/2000 to 11/2001. Enquiries under Section 7-A were conducted on 09.11.2001 and 28.12.2001 and finally, the respondent vide order dated 17.01.2002, had directed the petitioner to pay EPF dues for the period of default. The writ petitioner company filed a review petition under Section 7-B of the EPF & MP Act on 18.02.2002. After affording reasonable opportunity of being heard in the interest of natural justice, vide order dated 17.09.2002, the petitioner establishment was ordered to enrol all the trainees, since they were not trainees in the absence of a certified standing order.

17. The petitioner establishment contended that they had sent draft standing orders to the Labour Department for approval. The petitioner filed an application for review under Section 7-B of the EPF & MP Act on 21.02.2002. The inspection was held in 2001 and order under Section 7-A was passed on 17.01.2002 whereas, the petitioner establishment had submitted the draft standing orders to Labour Department only after the officers of the respondents had taken action to extend the EPF benefit to trainees, from which, it is obvious that only to escape from the EPF liability for these employees, the draft scheme was prepared and submitted by the employer to the Labour Department. As

such, it is the legitimate right of these employees to be enrolled as employees of the establishment and EPF dues have to be recovered and paid to these employees.

18. In the order passed by the BIFR in the case of M/s. Galada Power and Telecommunication Ltd., it was held that the protection to the sick establishments against the recovery of provident fund dues is not available under Section 22 of the Sick Industrial Companies Act, 1985 (SICA, 1985). The BIFR quoted the following judgment in a gist while passing the order dated 17.05.2002 in W.P.No.1688/2000 in M/s. Ralli Wolf Ltd. vs. Regional Provident Fund Commissioner, Thane (2001 Lab 1C 280), wherein it was held that "the Provident Fund and other dues payable under EPF & MP Act are part of the legitimate statutory entitlements of the workers. The petitioner is obligated to pay the contribution of the employees as well as his own contribution to the fund which is set up under the EPF & MP Act. The contribution of the employees is, in fact, a deduction from the wages which are due and payable to the employees". The Hon'ble High Court further observed that the recovery of provident fund and other dues under the EPF & MP Act does not fall within the scope and purview of Section 22 (1) of the SICA, 1985. This conclusion is fortified by the fact that Parliament, when it amended the provisions of the EPF & MP Act, granted only a limited protection confined to a waiver of damages under Section 14 B of the EPF & MP Act in the case of sick industrial company in respect of whom a sanctioned scheme is under implementation.

19. An observation of Andhra Pradesh High Court in the order dated 14.08.2001 in respect of Sarvaria Textiles Ltd., vs. Commissioner, Employees Provident Funds and others was taken note of by the BIFR that "Section 22 of SICA, 1985 must be reasonably construed to refer to only those proceedings which are not required for the day operation of the company, even in the case of a sick industrial company, the obligation of the petitioner to deduct and pay the employees contribution with its own contribution continues to subsist. The petitioner has not deposited the employees' share as directed by the BIFR. Accordingly, citing sickness of the petitioner establishment, non-payment of provident fund dues is not valid in accordance with the EPF & MP Act.

20. As per the agreement entered into by the petitioner with the "so called trainees", a consolidated amount of Rs.600/- is payable per month during the training period and the period of training was also mentioned as 2½ years. But a perusal of payment made to the trainees shows that the payment varies from Rs.700/-, Rs.800/- and Rs.925/-. Hence, it is clearly proved

that so called stipend was actually wages paid to the employees and not stipend. The Enquiry Officer had issued order under the EPF & MP Act, having regard to all the facts and circumstances of the case and perused all the documents placed before him and decided that all the persons employed under the head "trainees" should be enrolled as Provident Fund Members from the date of their engagement by the petitioner establishment. The establishment was engaging employees violating the provisions of the EPF & MP Act as well as the norms of the industry and deriving monetary benefit from the services of the "so called trainees".

21.It is also pertinent to note the term "employee". As per Section 2(f)(ii) of the EPF & MP Act, "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work (of an establishment) and who gets his wages directly or indirectly from the petitioner (and includes any person -

- i. employed by or through a contractor in or in connection with the work of the establishment;
- ii. engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment).

22.The petitioner made a request on 23.02.2004 to the respondents to furnish the copies of the reports submitted by the Assistant Provident Fund Commissioner and the two reports submitted by the Enforcement Officers which were not considered, as these reports were made based on the statement and records maintained by the petitioner. Further, the "so called trainees" were engaged in all departments of the petitioner Quality Control and inspection, which are normally the job of skilled employees.

23.Considering the arguments put forth by the petitioner as well as Enforcement Officer and the records produced by both the parties and on application of mind, the Enquiry Officer observed as follows:-

"(i) the draft standing orders were not certified by the competent authority and as such the trainees were not appointed under the Apprentice Act;

(ii) the period of apprenticeship and the amount of stipend fixed were not followed by the petitioner;

(iii) the number of trainees engaged was on higher side and the petitioner had engaged the number of trainees according to his whims and fancies;

(iv) the trainees were not extended the Social Security Benefits and were deprived under the guise of 'excluded employees';

(v) the petitioner engaged the trainees in quality control work and inspection, which are normally the job of skilled employees; and

(vi) sickness of the unit is not a bar for remittance of provident fund dues."

24. Taking the above facts into consideration, the "so called trainees" were treated as "employees" as per Section 2(f) of the EPF & MP Act and the enquiry was concluded. As the trainees were to be considered as employees, they were treated as employees after considering the contentions and arguments placed on record. The Enquiry Authority decided the "so called trainees" as employees and directed the petitioner to extend the Social Security Benefits to those trainees from the date of their engagement. Hence, the action of the respondents is correct as per facts and law.

25. An establishment shall, within 6 months from the applicability of the EPF & MP Act, has to submit the draft standing order for certification under Section 3 of the Industrial Employment (Standing Order) Act, 1946. The petitioner had not submitted the draft standing order in this case even after lapse of more than 10 years. The petitioner had submitted the draft standing orders to the Labour Department in August, 2002 only, that too, after the directions from the respondents to the petitioner in January, 2002 to pay the PF dues in respect of the "so called trainees".

26. In the light of the above, it is obvious that only to escape from the liability of paying the PF contributions to these employees, a draft scheme had been framed and submitted by the petitioner. As such, these employees were not trainees as claimed by the petitioner, but were regular employees employed under the head "trainees". Further, Section 7-B states that "any person aggrieved by an order made under sub-Section (1) of Section 7A, but from which no appeal has been preferred under the EPF & MP Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or an account of some mistake or error apparent on the fact of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order", provided that such officer may also on his own motion, review his order if he is satisfied that it is necessary so to do on any such ground."

As there was no new evidence produced, the review filed under Section 7-B was dismissed by the respondent.

27. This Court, considering the facts, circumstances as well as the arguments placed, thought it fit to consider the legal proposition regarding the condonation of delay for filing an appeal under Section 7-I of the EPF & MP Act. It is an admitted fact that the persons aggrieved, in respect of orders passed by the respondents, are entitled to prefer appeal before the Tribunal constituted under Section 7-I of the EPF & MP Act. However, the aggrieved persons are filing writ petitions without exhausting the statutory remedies provided under the EPF & MP Act. Undoubtedly, High Courts cannot entertain a writ petition under Article 226 of the Constitution of India without exhausting the statutory remedies contemplated under the EPF & MP Act in view of the fact that such a remedy is efficacious and the Special Tribunal is constituted for the purpose of adjudication of disputed issues and also the Presiding Officers of the Tribunal are the Judicial Officers either retired or serving.

28. Exhausting the statutory remedy is a rule. Approaching the High Court without exhausting the remedy is an exception. Thus, High Court can entertain a writ petition and only on exceptional circumstances, if there is gross violation, which is to be interfered with by exercising the extraordinary jurisdiction under Article 226 of the Constitution of India. In all circumstances, the parties are bound to exhaust the statutory remedies provided under the statute and only thereafter, they can approach the Court of Law.

29. When the EPF & MP Act contemplates that the aggrieved persons are entitled to prefer appeal under Section 7-I of the EPF & MP Act before the Tribunal constituted, which is a Special Tribunal, then the parties are bound to exhaust the remedy and more specifically, such Special Tribunals are empowered to adjudicate the disputed issues on merits and in accordance with law. The disputed issues are to be adjudicated with reference to the original records and evidences. Such an adjudication cannot be done in a writ jurisdiction under Article 226 of the Constitution of India. Thus, the High Courts would not have the benefit of the finding on facts, which is to be done by such Special Tribunals with reference to the original documents and the evidences placed before the Tribunal by the respective parties. Sometimes, in the absence of any such findings of facts and circumstances, it may not be possible for the High Court to decide the cases effectively. In such circumstances, the High Court are also adopting an easy way for the disposal of writ petitions by remanding the matter or to file an appeal by condoning the delay in the writ petition itself. In other words, one option exercised by the High Court would be to set aside the order and remand the matter back to the authority

concerned for re-adjudication. The second option would be to condone the delay in filing the appeal under Section 7-I of the EPF & MP Act and direct the aggrieved person to file an appeal before the Tribunal constituted.

30. Now, High Court has to examine, whether such course would be proper with reference to the legal principles to be derived. Of course, such courses being adopted by the High Court, may be helpful for easy disposal of the cases. However, the issues are not settled and the parties are made to back again for adjudication of the issues. In other words, parties are made to again approach the authorities, which may take longer time and the issues are not settled within a reasonable time. The long delay in deciding the issues may result in undue advantage or disadvantage or unjust enrichment to the parties concerned.

31. It is to be noted that some persons are making it as a point to protract and prolong the issues so as to take advantage of the delay occurred on account of deciding the issues on merits. Therefore, a class of litigants are there and they always take time to protract and prolong the issues to take undue advantage or for unjust enrichment. There are another set of litigants, who are longing to get speedy disposal with the fond hope that they will get a decision on merits in respect of the issues raised. However, the Courts have to be cautious in this regard and shall ensure speedy disposal as well as the disputes are resolved on merits.

32. High Court cannot adopt a method for easy disposal without deciding the issues. The issues are to be decided by the original authority as well as by the Tribunal, which is specially constituted for adjudication of the disputed issues. Thus, preferring of an appeal before the Tribunal is of paramount important and the legislatures also though it fit that such a Tribunal is to be constituted for effective and efficient adjudication of the issues. When the legislative intent is to provide an appeal against an order of the original authority, then such intent cannot be diluted by the High Court by entertaining the writ petitions and deciding the matters based on the materials placed before it. High Court cannot adjudicate the disputed issues. High Court cannot go into the decision itself. However, High Court can exercise the power of judicial review to ensure the process as well as the procedures followed by the authorities to arrive at such a conclusion or decision is in consonance with the legal principles or not. This being the scope of Article 226 of the Constitution of India, the disputed issues cannot be adjudicated in a writ proceedings.

33. Keeping in mind these concepts and the principles, the next question would be whether the High Court can condone the delay occurred on account of the pendency of the writ petition. High Court at present is condoning the delay in a routine manner. In other words, the litigants when they are unable to succeed in a writ petition, are seeking for an alternate relief to grant liberty to prefer an appeal under Section 7-I of the EPF & MP Act. While such submissions are made, then the High Court is granting relief by condoning the delay enabling the litigants to prefer an appeal before the Tribunal under Section 7-I of the EPF & MP Act. Such a course whether proper or not is a question to be answered.

34. In the present case also, the learned Senior Counsel appearing on behalf of the writ petitioner contended that the writ petitioner, in the event of granting liberty, would prefer an appeal under Section 7-I of the EPF & MP Act and in such an event, the delay in filing the appeal is to be condoned in view of the fact that the writ petition was pending for the past six years before this Court for which, the writ petitioner cannot be blamed. Pending litigation would not be a ground to claim the benefit of condonation of delay. It is for the litigants to take the right course by following the procedures contemplated under the law. If a wrong course is preferred without exhausting the remedy, then the High Court may not grant any relief, as the parties themselves have taken a decision to prefer writ petition.

35. As far as the condonation of delay is concerned, Mr. Balan Haridas, learned counsel, assisted the Court by submitting three judgments. The first judgment is Indian Coffee Worker's Co-op. Society Ltd., vs. Commissioner of Commercial Taxes reported in 2002 (1) CTC 406. In the said case, a Division Bench of this Court considered the very same issue and the facts, which are all akin to the facts of the present case. At this juncture, it would be relevant to extract paragraphs 22 to 24 of the judgment as hereunder:-

"22.

At this juncture, we would like to point out two rulings of the Constitutional Bench of Supreme Court, viz.,

(i) A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhvani and another, reported in AIR 1961 SC 1506, wherein the Supreme Court ruled thus, "If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Art. 226 to exercise its discretion

in his favour."

(ii) In Sales Tax Commissioner vs. Modi Sugar Mills, reported in AIR 1961 SC 1047, while interpreting taxing statute, the Supreme Court observed thus, "In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."

.....
23. The legal position is as follows:

(a) An appeal under Section 30(1) of the Tamil Nadu General Sales Tax Act, 1959 has to be filed within 30 days before the appellate Assistant Commissioner. The appellate Assistant Commissioner is empowered to condone the delay for further period of 30 days if sufficient cause for not presenting the appeal in time is shown and satisfied by the appellate authority.

(b) Under no circumstances, the appellate authority has power to condone the delay beyond 30 days.

(c) While the High Court exercising the jurisdiction under Article 226 of Constitution of India, approves the correctness of the order of the appellate authority, it has no power to direct the appellate authority to consider the appeal on merits as otherwise it would be nothing but Court extending the period of limitation.

(d) Even if the High Court accepts the explanation given by the assessee for not filing the appeal within the period prescribed under the Act, it cannot direct the appellate authority to consider the matter on merits as the High Court exercising jurisdiction under Article 226 of Constitution of India, cannot re-write the provisions of the Act.

24. In this view of the matter, this Court is of the opinion that the Writ Petition has to fail and consequently the Writ Petition is dismissed. Connected W.M.P., will stand closed."

36. The Division Bench considered the issue that "if a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 to exercise its discretion in its favour". This exactly is the situation in the present writ petition also. Wherever the parties have chosen not to file a statutory appeal and had decided to file a writ petition, thereafter, they are estopped from making a submission that they are entitled for condonation of delay in view of the fact that the writ petition is pending before the High Court for many number of years. Under those circumstances, it is to be construed that the aggrieved person has disabled himself from availing himself of the statutory remedy by his own fault. Under those circumstances, if the High Courts exercise the discretionary power under Article 226, undoubtedly, the same would amount to re-writing of the statute itself and further interference in the legislative intent, which is impermissible in view of the settled legal principle.

37. The legislative intent as well as the express provisions in the statute cannot be violated ordinarily. Only on certain exceptional circumstances and in the event of any gross injustice, the High Courts can interpret the statute in order to achieve social justice or any of the constitutional mandates or perspectives and not otherwise. Thus, in normal circumstances, High Courts are bound to adopt the language as it is, and adopt the intent of the legislature as it is. While interpreting the provisions of the statute, liberal or constructive interpretations are to be made considering the constitutional philosophies and ethos and therefore, the interpretation cannot be made otherwise, other than the language employed in the statute. The Division Bench considered the legal position and laid down the principles to be followed, while condoning the delay for filing the statutory appeal in the event of filing a writ petition without exhausting the statutory remedy provided under the statute. The said judgment would squarely applicable with reference to the facts and circumstances of the present case.

38. The Hon'ble Supreme Court in the case of Oil and Natural Gas Corporation Ltd., vs. Gujarat Energy Transmission Corporation Ltd., and Others reported in (2017) 5 SCC 42, in paragraphs 15 and 19 held as follows:-

"15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Assn. vs. Union of India, (1998) 4 SCC 409 has ruled that there is no conflict of opinion

in A.R.Antulay vs. R.S.Nayak, (1988) 2 SCC 602 or in Union Carbide Corpn. vs. Union of India, (1991) 4 SCC 584 with the principles set down in Prem Chand Garg vs. Excise Commr., ARI 1963 SC 996. Be it noted, when there is a statutory command by the legislation as regard limitation and there the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental general issues of public policy as has been held in Union Carbide Corpn. Case. As the pronouncement in Chhattisgarh SEB vs. Central Electricity Regulatory Commission, (2010) 5 SCC 23 lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act.

16.

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18.

19. Another aspect needs to be adverted to. Mr. Agarwal submits that when the delay in review was condoned by this Court, the appellant should not be permitted to raise a preliminary objection. Suffice it to say, it is not an application under Section 5 of the Limitation Act which is to be entertained by the Court. We are singularly concerned with entertaining of an application for condonation. If the delay is statutorily not condonable, the delay cannot be condoned. There is no impediment to consider the preliminary objection at the later stage. That will be in consonance with the statutory provision. Needless to say, the order passed by this Court condoning the delay has to be ignored and we do so."

39. The Hon'ble Supreme Court in unequivocal terms held that the Act is a special legislation. Thus, the prescription with regard to the limitation has to have the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 226 of the Constitution. The Hon'ble Supreme Court in unequivocal terms elaborated that even under Article 142 of the Constitution, the Supreme Court cannot condone the delay, which is otherwise uncondonable. Therefore, uncondonable delay cannot be condoned by the High Courts under Article 226 of the Constitution also.

40. In the present case, Section 7-I of the EPF & MP Act contemplates "Appeals to the Tribunal". Sub-Clause (2) of Section 7-I enumerates that "every appeal under sub-Section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed". Thus, Section 7-I(2) expresses the intention of the legislature that every appeal under Section 7-I is to be filed in such form and manner, within such time and be accompanied by such fees. Therefore, it is mandatory that the rules and procedures are to be framed for compliance of Section 7-I of the EPF & MP Act. The legislative intent, in this regard, is made clear that the Tribunal is to be constituted and the aggrieved persons can approach the Tribunal under Section 7-I of the EPF & MP Act and in the event of filing an appeal, such appeal is to be entertained within such time in such format, which is to be prescribed. In this context, we have to consider the provisions of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997 (hereinafter referred to as "the EPFAT Rules"). The EPFAT Rules provide the procedures to be followed for filing an appeal.

41. Rule 7 of the EPFAT Rules speaks about "fee, time for filing appeal". Rule 7(2) contemplates that "any person aggrieved by a notification issued by the Central Government or an order passed by the Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal", provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days". Thus, the Tribunal is empowered to condone the delay of 60 days beyond the limitation period of 60 days. When the limitation is prescribed under the Special Act, then

the High Courts cannot exercise the discretion under Article 226 of the Constitution so as to dilute the law of limitation contemplated under the Special Act or to deviate the legislative intent, which is expressly made in the provisions of the Act itself.

42. In *Simplex Infrastructure Ltd. vs. Union of India* (2019) 2 SCC 455, the Hon'ble Supreme Court, held as follows:-

"18. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.

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21. Under the circumstances, we are of the considered opinion that in view of the period of limitation prescribed in Section 34(3), the learned Single Judge of the High Court was not justified in condoning the respondent's delay of 514 days in filing the application. The judgment rendered by the learned Single Judge of the High Court of Calcutta on 27 April 2016, in GA No. 958 of 2016 is set aside and the appeal is allowed. The petition under Section 34 stands dismissed on the ground that it is barred by limitation. There shall be no order as to costs."

43. Looking into the spirit of the above three judgments, one by the Hon'ble Division Bench of this Court and the other two by the Hon'ble Supreme Court, it is crystal clear that any uncondonable delay cannot be condoned by the High Courts exercising the discretionary power under Article 226 of the Constitution. Therefore, when the person aggrieved himself has disabled from availing the statutory remedy on account of his own fault by doing so within the prescribed time, then High Courts cannot exercise its jurisdiction so as to dilute or

violate legislative intent and the express provision made available under the statute.

44. The very object and purpose of prescribing limitation is to ensure speedy disposal of the disputed issues. In the event of prolongation and protraction, not only the aggrieved persons, but the revenue to the organisation would also get effected. The EPF & MP Act being a welfare legislation enacted for the benefit of the workmen class, the recovery of contributions are of paramount important and equally for settlement of benefits to the employees in a speedy manner so as to protect the livelihood of the employees concerned. Payment of service benefits from special provident benefit is to be construed as a "livelihood", as it is a long term contribution made and this apart, the Act includes the payment of monthly pension to the working class. Thus, in the event of any lapse in recovering the contribution from the employer, the same would affect the livelihood of the employees or if there is any delay in payment of provident fund or pension or other consequential benefits, it is to be construed that any such delay in payment would be in violation of Article 21 of the Constitution.

45. "Life" means a "decent life" and an employee, who served for a considerable length of time in an organisation, has got a vested right to claim his retirement benefit including provident fund and pension, which are already made available under the Act itself. Thus, all these aspects are to be considered, while exercising the power of discretion. If exercise of such discretion leads to prolongation and protraction of the litigations, then the High Court would not exercise such discretion in favour of the employer so as to pave way for delay in disposal of the disputed issues.

46. Admittedly, Section 7-I of the EPF & MP Act provides for filing of an appeal.

(i) Section 21(2)(b) of the EPF & MP Act provides that the Central Government can frame rules as to the time within which an appeal shall be filed before the Tribunal.

(ii) Rule 7 of the EPFAT Rules framed under Section 21 provides for an outer time frame of 60 days to condone the delay i.e., a maximum time frame of 120 days.

(iii) Under the Gratuity Act, Sales Tax Act, Excise Laws and in various other legislations, the Act itself provided for an outer time frame to file an appeal. Thus, it is an argument placed before this Court that the High courts cannot exercise its power under Article 226, as it would be going beyond the legislative provision and intent whereas, under the EPF & MP Act, the legislature did not provide for an outer time frame in the Act. The legislature in Section 21 merely provided that

rules can be framed with regard to the time for filing an appeal. Rules framed by the Central Government cannot be equated to an Act that has been legislated by the legislative (Parliament). A rule framed by the Central Government beyond the legislative powers i.e., beyond what is provided in Section 21, cannot take away the powers of this Court under Article 226 is also a point of view projected before this Court. While this Court is bound by legislative law, under Article 226, it cannot go beyond the legislature.

47. In this case, this Court would not go beyond the legislative intent. This is because the law did not provide for an outer time limit. In support of the said contentions, a judgment of the Hon'ble Supreme Court in the case of Superintending Engineer/ Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper & Another vs. Excise and Taxation Officer [Civil Appeal Nos.8276-8277 of 2019: Dated 25.10.2019] was relied on. The Hon'ble Supreme Court, in paragraphs 21 and 23, held as follows:-

"21. The provisions of section 5 are applicable to Section 48 as they are not expressly excluded by the provisions under the Act of 2005. More so, in view of the provisions in section 45(4), which makes provisions to condone the delay like the Limitation Act, conferring power upon an authority also to condone delay. Further, suo motu revision has also been provided under section 46. In section 48, there is no express exclusion. Because of the scheme of the Act, it cannot be inferred that by implication, the provisions of section 5 of the Limitation Act are excluded. Provisions contained in section 29 (2) of the Limitation Act would be attracted as there is no express exclusion or by implication, in view of the provisions of the Act of 2005. We hold that by virtue of the provisions contained in section 29(2), provisions of section 5 of the Limitation Act would apply to proceedings under Section 48 of the Act of 2005.

22.

23. We are of the considered view that the decision of the High Court cannot be said to be sustainable. The provisions of Section 5 of the Limitation Act are held applicable to the revisional provision under Section 48 of the Act of 2005. The impugned judgments and orders are set aside; the cases are remitted to the High Court to examine the same on merits in accordance with the law."

48.As far as the above recent judgment of the Hon'ble Supreme Court is concerned, the question raised was whether High Courts can entertain the revision by condoning the delay or not under Section 48 of the Himachal Pradesh Value Added Tax Act, 2005 ('the Act 2005'). Section 48 of the Act 2005 contemplates revision to High Court. The provision states that any aggrieved person by an order made by the Tribunal under sub-Section (2) of Section 45 or under sub-Section (3) of Section 46, may, within 90 days of the communication of such order, apply to the High Court of Himachal Pradesh for revision of such order, if it involves any question of law arising out of erroneous decision of law or failure to decide a question of law. Thus, power of the High Court to condone the delay for the purpose of entertaining a revision to the said Act was the question raised before the Supreme Court and further there is no outer limit fixed in the said Act. This apart, the language employed in Section 48 of the Act 2005 is that "may within 90 days". Therefore, High Courts for sufficient reasons are empowered to condone the delay when the language adopted in the statutes "may within the prescription" lies to the High Courts to exercise its jurisdiction to condone the delay if the reasons are sufficient. Therefore, the judgment interpreting Section 48 of the Act 2005 for the purpose of condoning the delay in filing a revision to the High Court cannot be compared with the period of limitation which is prescribed under the EPF & MP Act and this apart, the language adopted in the Act 2005 is "may within 90 days" and in this case, the time limit is prescribed in clear terms and therefore, the judgment of the Hon'ble Supreme Court that the High Court can condone the delay beyond the period of limitation cannot be made applicable in respect of the provisions of the EPF & MP Act, wherein the legislative intent is unambiguous.

49.In the case of Patel Brothers vs. State of Assam and Others reported in (2017) 2 SCC 350, the Supreme Court made an observation relying on the decision in the case of Commissioner of Customs and Central Excise vs. Hongo India (P) Ltd., reported in (2009) 5 SCC 791. The relevant paragraphs are extracted hereunder:-

"16. In the process, the Court also explained the expression 'expressly excluded' appearing in Section 29(2) of the Limitation Act, 1963 in the following manner:

"34. Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted, what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to the High Court.

35. It was contended before us that the words "expressly excluded" would mean that there must be

an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court."

17.

18.

19. The Argument predicated on 'no express exclusion' loses its force having regard to the principle of law enshrined in *Hukumdev Narain Yadav*. Therein, the Court made following observations while examining whether the Limitation Act would be applicable to the provisions of the Representation of the People Act or not:

"17. ... but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what

extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.”

20.

21.

22. The High Court has rightly pointed out the well settled principle of law that

“19. the court cannot interpret the statute the way they have developed the common law 'which in a constitutional sense means judicially developed equity'. In abrogating or modifying a rule of the common law the court exercises the same power of creation that built up the common law through its existence by the judges of the past. The court can exercise no such power in respect of statute, therefore, in the task of interpreting and applying a statute, Judges have to be conscious that in the end the statute is the master not the servant of the judgment and no judge has a choice between implementing it and disobeying it.” What, therefore, follows is that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking Section 5 of the Limitation Act, 1963 so as to supplement the provisions of the VAT Act which excludes the operation of Section 5 by necessary implications.”

50. The above observations of the Supreme Court reveals that in the task of interpreting and applying a statute, Judges have to be conscious that the intent of the statute is the master, not the servant of the judgment and no Judge has a choice between implementing the law and disobeying it.

51. The Supreme Court in Patel Brothers Case (supra), used the above expression though seems to be harsh, but is the binding law. Therefore, Judges have no option, but to trace the intent of the legislature so as to exercise the power of discretion under Article 226 of the Constitution. It is not as if the High Courts can grant condonation of delay by superseding the express limitation provided under the statute. Thus, the above observation makes it sensible that the power of discretion to condone the delay in preferring the appeal under the statute cannot be granted under Article 226 of the Constitution and the Judges have to be conscious in interpreting and application and accordingly, the said findings are very much relevant as far as the present facts and circumstances in the present writ petition are concerned.

52.A Division Bench of the Delhi High Court in the case of Assistant Regional Provident Fund Commissioner vs. Employees Provident Fund Commissioner reported in (2005) DLT 502, in paragraphs 40 and 42 held as follows:-

"40. In the instant case, there is clear intention of the Legislature for asking the rule making authority to prescribe the time during which an appeal shall be filed. When the time is to be prescribed, it is open for the rule making authority to prescribe extended period also. If the extended period is provided, the provisions would not become bad or ultra vires the provisions contained in the Act, as it is only an enabling provision.

41.

42. Considering the language of the Act and the rules, the Scheme, which is meant for weaker section and from the intention of the Legislature, it is clear that the Legislature left it to the Rule making authority to prescribe the time by specifically referring that an appeal under sub-section (1) shall be filed within such time as also specifically referring in Section 21 about the form and the time within which an appeal shall be filed. It is clear that the legislature left it to the Rule Making Authority to prescribe total period during which an appeal can be filed, which includes extended period. This being an enabling provision and in consonance with the provision contained in the Act cannot be said to be ultra vires the provisions contained in the Act."

53.The prescription of time limit in a rule in consonance with the provisions of the EPF & MP Act was considered by the Division Bench. The above proposition would be applicable to the present case also, as Section 7-I(2) of the EPF & MP Act contemplates that an appeal is to be filed within such time, in such format and by paying the fees. The rules provide limitation for filing an appeal. Thus, such prescription of limitation in the Rules cannot be construed as ultra vires to the constitution and therefore, as per the Division Bench judgment, the present contemplation of limitation in the rules are also to be upheld and even otherwise the limitation is originally contemplated under the Act more specifically in Section 7-I(2) of the EPF & MP Act. However, the context in

which the Supreme Court made the above observation cannot have any implication with reference to the issues raised in the present writ petition regarding the condonation of delay by the High Court superseding the legislative intent as well as the express provision made under the EPF & MP Act as well as the Tribunal Procedure Laws.

54.As far as the EPF & MP Act is concerned, Section 7-I(2) enumerates that every appeal shall be filed in such format and manner within such time and be accompanied by such fees. Thus, the legislative intent is to prescribe the time limit as well as the format and also fees to be paid. When the legislative intent is to fix the time limit and such a time limit is prescribed by way of rules or procedures, then it is to be read cogently so as to provide a constructive interpretation that the law of limitation prescribed in the Special Act would be applicable scrupulously. The Act itself provides that an appeal is to be filed within such time and therefore, the prescription of time limit is followed in the rules and such a construction of the Act as well as the Rules cannot be read separately and a cogent reading of the provisions of the Act as well as the Rules portrays that the limitation is intended to be provided by the legislature and, it is actually provided and, the time limit alone is prescribed in the rules. This being the construction and scheme of the Act, this Court is of an opinion that the judgments earlier cited by this Court, viz., Indian Coffee Worker's Co-op. Society Ltd. (supra) and Oil and Natural Gas Corporation Ltd. (supra) would be applicable for the purpose of deciding the issue whether the High Courts can condone the delay in filing the statutory appeal under the provisions of the Act.

55.As far as the point raised that the Courts cannot exercise its power beyond the legislative provision and intent are concerned, there is no dispute. The point of view expressed is that the EPF & MP Act did not provide any time limit and therefore, the discretionary power under Article 226 can be exercised, when there is no limitation specifically provided under the Act itself. The said ground raised can be countenanced by stating that the legislative intent is expressly made in sub-Clause (2) of Section 7-I of the EPF & MP Act. Thus, the appeal is to be filed within such time. Therefore, the number of days for preferring the appeal alone is provided under the rule and the limitation to be prescribed is very much provided in the Act itself. Thus, the point of view raised before this Court deserves no merit consideration, as the statute is unambiguous that the appeal is to be preferred in such a manner with such a format within such time and by paying fees. Therefore, the legislature expressly states that the appeal is to be filed within such time. Such time alone is elaborated in the rules and therefore, the legislative intent

cannot be separated and the rules cannot be read in isolation. Both should be read together cogently so as to understand the purpose, object and the legislative intent.

56. Accordingly, this Court is of a considered opinion that the Special Act provides that appeal is to be filed within such time and the time limit is provided in the rules and together it is to be held that the legislative intent is to prescribe a time limit for preferring appeal. Accordingly, the proposition that the discretionary power under Article 226 can be exercised for condoning the delay cannot be an acceptable proposition of law. Contrarily, it is to be construed that High Courts would be exceeding its power in exercising the same under Article 226 of the Constitution. As far as the facts and circumstances of the present case is concerned, as per Section 2(f) of the EPF & MP Act, even the apprentice engaged is not an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) is also coming under the purview of the Act. Only the apprentices engaged under the Apprentices Act, 1961 or under the standing orders of the petitioner establishment are exempted.

57. In the present case, the Enforcement Wing of the EPF organisation submitted a report stating that the employees are designated as trainees so as to evade contribution under the EPF & MP Act. Further, the inspection conducted by the Assistant Commissioner also reveals that so called trainees were receiving wages and they were not engaged under the Apprentices, Act, 1961 and there is no certified standing orders so as to grant exemption. Thus, the reports as well as the inspections confirm that the claim of the writ petitioner that they have engaged 'trainees' is incorrect and there is no record to show that they are exempted under the certified standing orders. This being the factum, the very claim set out by the writ petitioner is not supported with any documents. However, learned Senior Counsel for the petitioner states that regarding certain documents for the purpose of establishing the standing orders, they require an opportunity. Such an opportunity ought to have been availed by the writ petitioner by preferring an appeal under Section 7-I of the EPF & MP Act. When the petitioner themselves have not availed the benefit of the statutory appeal for the purpose of adjudicating certain issues, now they cannot plead before this Court that the delay in filing an appeal under Section 7-I is to be condoned. This exactly is the proposition laid down by the Division Bench of this Court in the case of Indian Coffee Worker's Co-op. Society Ltd. (supra) wherein, the Division Bench while following the judgment of the Hon'ble Supreme Court in the case of A.V.Venkateswaran, Collector of Customs vs. Ramchand Sobhraj Wadhwani and Another reported in AIR 1961 SC 1506 held that "if a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within

the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 of the Constitution to exercise its discretion in his favour". This apart, the uncondonable delay cannot be condoned taking recourse to Article 226 of the Constitution. Thus, uncondonable delay is nothing but the legislative intent as well as the express provision made available fixing the limitation for preferring an appeal. Under these circumstances, this Court cannot consider the arguments that the petitioner should be permitted to file an appeal and the delay in filing the appeal to be condoned by the High Court in the present writ petition and such argument is not in consonance with the established legal principles as discussed above.

58. Under these circumstances, even on merits, the petitioner has not made out a better case for the purpose of interference by this Court with reference to the orders impugned passed. As far as the alternate relief sought for to condone the delay in filing the appeal under Section 7-I is concerned, it is interpreted by this Court in the aforementioned paragraphs and the High Courts cannot condone the uncondonable delay and therefore, such a relief also cannot be granted and the only option would be that the petitioner is bound to pay the contribution as per the claim set out in the impugned orders and accordingly, proceed to pay as per the provisions of the Act and Rules.

59. During the course of arguments, the learned Senior Counsel appearing on behalf of the writ petitioner as well as the Members of the Bar expressed their anguish regarding the manner in which the Appellate Tribunal is deciding the matters belatedly and they are unable even to dispose of any case. In fact, the Members of the Bar made a complaint that adjournments are granted in a callous manner and the matters listed in October 2019 are adjourned to May 2020 and therefore, they are unable to get disposal of any case before the Tribunal.

60. Large number of cases are pending and the rights of the parties are also affected. The poor working classes are unable to get their remedy and the long delay in deciding such cases would affect their livelihood and this apart, they may not get speedy remedy in the near future. Under these circumstances, the Members of the Bar urged this Court by stating that more number of Tribunals are required for the purpose of speedy disposal of cases, as the number of cases are also consistently increasing and therefore constitution of Additional Tribunals are also required. At the outset, it is contended that the functioning of the Tribunal is as such where the litigants are unable to get speedy justice and the parties are unnecessarily made to wait for years together without any progress in the cases.

61.This Court is of the considered opinion that the welfare legislations, more specifically, in Labour Laws are meant for speedy disposal of cases as the employees or Managements cannot afford to wait for long years in respect of disposal of the cases, as it would affect both the parties. For instance, if there is a delay in redressing the grievances of an employee, he would lose his livelihood and the employee will also lose his rights and benefits under the Labour Laws. So also, if there is a delay in deciding the cases filed by the Management, the Management has to pay huge back wages as well as the interest. Thus, the long delay in deciding the cases would affect all the parties concerned and therefore, speedy disposal of the cases before the Appellate Tribunal is an imminent factor and is highly warranted.

62.The Members of the Bar raised a concern that their repeated requests also went in vain and they are unable to get disposal of their cases as expeditiously as possible. Though the Members of the Bar made certain complaints against the functioning of the Tribunal, this Court is not willing to consider the same, as those complaints cannot be dealt with in this writ petition.

63.This Court is of the considered opinion that speedy disposal is also a right of an aggrieved person, more specifically, in labour side. The parties, who all are waiting for justice number of years, must be considered and the Tribunal must ensure early disposal of the cases. In this regard, the Secretary, Government of India, Ministry of Labour and Employment Department, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001, is directed to conduct a review or inspection, so as to identify the problems and the issues in the matter of speedy disposal of the cases before the Appellate Tribunal and ensure that the object and the purpose for which the Tribunals are created is fulfilled and further ensure that the rights of the respective parties are protected, as the same being the constitutional mandate as well as the obligation on the part of Government of India, being a model State. Thus, the Government of India is bound to review the functioning as well as the disposal of the cases done by the respective Judicial Officers and accordingly take adequate steps to ensure speedy disposal of the cases to the litigants, who all are approaching the Tribunal under the provisions of various Statutes or Laws.

64.For the purpose of conducting such a review or inspection and to comply with the directions of this Court, this Court is suo motu inclined to implead the The Secretary, Ministry of Labour & Employment Department, Government of India, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001 as the third

respondent in the writ petition and the Registry of the High Court is directed to communicate the copy of this order, enabling the Ministry of Labour and Employment Department to look into the matter and initiate all necessary steps. The said exercise of conducting a review or inspection as the case may be to be done by the impleaded third respondent, within a period of three months from the date of receipt of a copy of this order.

65. In view of the above discussions, this writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Regional Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Sub-Regional Office,
No.101, 100 Feet Road, Cholan Nagar,
Olandai, Keerapalayam,
Puducherry-605 004.

2. The Assistant Provident Fund
Commissioner (Comp),
Employee's Provident Fund Organisation,
Sub-Regional Office,
No.101, 100 Feet Road, Cholan Nagar,
Olandai, Keerapalayam,
Puducherry-605 004.

3. The Secretary,
Ministry of Labour & Employment Department,
Government of India, Shram Shakti Bhawan
Rafi Marg., New Delhi-110001.

+1cc to Mr.P.Nehru, Advocate Sr.92210

+1cc to Mr.V.J.Latha, Advocate Sr.92321

W.P.No.28363 of 2013

nr[co]
srg 09/01/2020