IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.09.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.24433 of 2018
and
W.M.P.No.28476 of 2018

M/s.Deccan Enterprises,
Rep by its Proprietor Mr.N.Krishnamoorthy,
R.S.No.15/17, Door No.53,
Vazhudavur Road,
Kurumbapet, Pondicherry - 605 009.

... Petitioner

..Vs..

1.The Employees Provident Fund Appellate Tribunal,
Scope Minar, Core - II,
4th Floor, Laxmi Nagar District Centre,
New Delhi - 110 092.

2.The Regional Provident Fund Commissioner,
Tamil Nadu & Pondicherry,
No.20, Royapettah High Road,
Royapettah, Chennai - 600 014.

3.The Assistant Commissioner (Recovery),
EPFO, RO, Puducherry,
Ministry of Labour and Employment,
Government of India, No.101, 100 Feet Road,
Sree Venni Commercial Complex,
Chollan Nagar, Olandai Keerapalayam,
Puducherry - 605 004.

4.The Assistant Regional Provident Fund Commissioner,
(PDC) Minisry of Labour,
Government of India, No.101, 100 Feet Road,
Sree Venni Commercial Complex,
Chollan Nagar, Olandai Keerapalayam,
Puducherry - 605 004.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Manadamus, directing the first respondent to process the Appeal filed by the petitioner before the 1st respondent on 02.05.2018 by condone the delay of 2402 days in respect of order dated 24.11.2011 vide No.PDC/PC/688/REgl./2011 and 2098 days delay in respect of order dated 25.09.2012 vide No.PDC/PC/688/Regl./2012 passed by the fourth respondent and forbearing the 3rd respondent herein from proceeding with any further action in respect of the Notice dated 02.08.2018 bearing No.TBM/SRO/PDY/Recy-Cell/PC/688/Div.II/2018.

For Petitioner : Mr.N.Srinivasulu

For Respondents : Mrs.V.J.Latha (For R.2 to R.4)

O R D E R

The present writ of mandamus is filed to direct the first respondent to process the Appeal filed by the petitioner before the 1st respondent on 02.05.2018 to condone the delay of 2402 days in respect of order dated 24.11.2011 vide No.PDC/PC/688/REgl./2011 and 2098 days delay in respect of order dated 25.09.2012 vide No.PDC/PC/688/Regl./2012 passed by the fourth respondent and forbearing the 3rd respondent herein from proceeding with any further action in respect of the Notice dated 02.08.2018 bearing No.TBM/SRO/PDY/Recy-Cell/PC/688/Div.II/2018.

2. The learned counsel for the writ petitioner made a submission that the writ petitioner filed an appeal before the first respondent on 02.05.2018, vide Registration Nos.675, 676 of 2018, in pursuance of orders passed by the 4th respondent on 24.11.2011 and 25.09.2012 and the said appeals were returned on 03.07.2018 by the Registry and the petitioner has represented the said appeals on 21.08.2018.

3. The learned counsel for the writ petitioner states that the 4th respondent has issued notice on 13.09.2011, under Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 to levy the damages for the defaulted EPF payment for the period March 2009 to February 2010 and thereby claimed a sum of Rs.3,34,919/-. Subsequently the 4th respondent issued another Notice on 22.05.2012 under Section 14-B of the Act to levy the damages for the defaulted EPF payment for the period of March 2008 to 2009 and 2010 to 2011 and thereby claimed a sum of Rs.2,42,340/-. The writ petitioner submitted a reply to the 4th respondent through the letter dated 27.10.2011 assigning the reasons for the delayed payments and also to

waive the amount claimed in the notice. However, the 4th respondent passed an order on 25.09.2012 and directed the writ petitioner to pay a sum of Rs.2,42,340/- and further proceedings dated 24.11.2011 are passed to pay a sum of Rs.2,51,844/-. The third respondent had attached the movables by attachment notice dated 20.01.2014 and further attachment notice was also passed by the third respondent through an attachment dated 21.01.2014.

4. Under these circumstances, the writ petitioner filed an appeal during the year 2018, the said appeals were returned by the Registry of the Tribunal on the ground that the appeals were filed for an enormous delay of more than 2000 days. Challenging the said returning of the appeals, the present writ petition is filed.

5. The learned counsel for the writ petitioner states that earlier the writ petitioner filed writ petition and the said writ petition was pending for more than three years. Therefore, the writ petitioner had not preferred an appeal before the Tribunal under Section 7 I of the Act. However, after the disposal of the writ petition, the appeals were filed in the year 2018 and the reasons are also enumerated in the appeal filed by the writ petitioners. Citing this reasons, the learned counsel for the writ petitioner states that the delay is to be condoned and the appeal is to be adjudicated on merits.

6. The learned counsel appearing on behalf of the respondents 2, 3 & 4, the Regional Provident Fund Commissioner opposed the contention by stating that the delay is enormous and such a huge delay cannot be condoned at all. As per the Statute, the period of limitation prescribed for filing of appeal is 60 days and the Tribunal is empowered to condone the delay of further 60 days and in total the appeal is to be filed within a period of 120 days from the date of passing of the order from the Regional Authority and beyond the period of 120 days, the Tribunal cannot entertain any appeal.

7. As far as the present writ petition is concerned, if the delay is for a reasonable period, then the High Court can exercise the extraordinary jurisdiction in the interest of justice, so as to provide the benefit of adjudication on merits. However, in the present case, the delay is enormous and therefore, this Court cannot condone such a huge delay of more than seven years, for filing of the appeal. The original orders were passed in proceedings dated 24.11.2011

and 25.09.2012, and against these two orders, the appeals were filed in the year 2008. Thus, there is a delay of more than 7 years and such a huge delay cannot be condoned in a routine manner, so as to defeat the very spirit of the limitation prescribed under the Statute.

8. In this regard, the learned counsel for the respondents 2 to 4, cited the judgment of the Supreme Court of India in the case of Oil and Natural Gas Corporation Limited vs. Gujarat Energy Transmission Corporation Limited and others reported in (2017) 5 Supreme Court Cases 42, and the relevant paragraphs are extracted hereunder:

> " 4.Section 125 of the Act reads as follows:
>
> "125.Appeal to Supreme Court.- (1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court, within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):
>
> Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days".
>
> On a plain reading of the aforesaid provision, it is clear as crystal that this Court, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period of 60 days from the date of communication of the decision or order of the Appellate Tribunal to him, may allow the same to be filed within a further period not exceeding 60 days. It is quite clear hat this Court has the jurisdiction to condone the delay but a limit has been fixed by the legislature, that is, 60 days.
>
> 6.The two-Judge Bench placed reliance on Singh Enterprise v. CCE and Commr.of Customs and Central Excise v. Hongo India (P) Ltd., and came to hold that section 5 of the Limitation Act cannot be invoked by this Court for maintaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days in view of the prescription under Section 125 of the Act and the proviso appended thereto. In that context, the Court held: (Chhattisgarh SEB case, SCC p.36, para 32)

"32. .... Any interpretation of Section 125 of the Electricity Act which may attract the applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory"."

9. In view of the facts and circumstances, enumerated in the affidavit filed in support of the writ petition, this Court is not convinced with the reasons provided and further the huge delay of more than 7 years cannot be condoned, so as to entertain the appeal filed before the Tribunal under Section 7 I of the Act. In other words, the reasons stated by the writ petitioners are neither candid nor convincing.

10. Thus, this Court is not inclined to entertain the writ petition and accordingly, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Pns

To

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+1cc to M/s.V.J.Latha , Advocate SR.No. 79784
+1cc to Mr..N.Srinivasulu , Advocate SR.No. 79584

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A.SK(22/10/2019)