IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.11.2019
CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.30732 of 2014
and
M.P.No.1 of 2014

The Assistant PF Commissioner,
Employees' Provident Fund Organisation,
Dr.Balasundaram Road,
Coimbatore-641 018. .. Petitioner

-vs-

1.The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
Scope Minar Core-II, 4th Floor,
Lakshmi Nagar, New Delhi-110 092.

2.M/s.Prospect & Liddellesdale Tea Estate,
Rep., by its Managing Director,
Upper Prospect Tea Division,
Prospect Po - 643 224. .. 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 proceedings of the 1st respondent dated 28.01.2014 in ATA No.355(13)2012 and quash the order passed therein.

For Petitioner : Mr.C.Kulanthaivel

For Respondents : R1 - Tribunal

: R2 - Mr.P.Sukumar

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ORDER

The order dated 28.01.2014, passed by the 1st respondent in ATA No.355(13)(2012) is sought to be quashed in the present writ petition.

2.The writ petitioner is the Assistant Provident Fund Commissioner, Employees' Provident Fund Organisation, Coimbatore.

3.The order passed by the Appellate Tribunal under Section 7-I of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") is under challenge mainly on the ground that the appeal itself was filed by the 2nd respondent company after a lapse of 13 years from the date of passing of the orders under Section 7-A of the Act.

4.The learned counsel appearing on behalf of the writ petitioner made a submission that different orders under Section 7-A of the Act were passed by the competent authorities on 13.01.1999, 20.01.1999, 12.03.1999, 16.06.1999, 06.12.1999, 13.12.1999, 06.03.2000, 27.09.2000, 08.08.2011 and 09.08.2011. The said orders were challenged in one appeal under Section 7-I of the Act. The procedure followed for entertaining one appeal itself is in violation of Rule 10 of the Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997.

5.As per the Rules, one appeal is to be filed against one order. However, the appeal in this case was filed by the 2nd respondent company challenging several orders passed under Section 7-A of the Act. Thus, the Appellate Tribunal erroneously numbered the appeal, as the appeal itself is not maintainable in view of the fact that the 2nd respondent challenged several orders passed by the competent authorities under Section 7-A of the Act. This apart, the orders were passed in the year 1999 and the appeal was filed in the year 2012. The appeal was filed challenging several orders in order to overcome the limitation, as the last order was passed in the year 2011. Such an approach cannot be entertained and the Appellate Tribunal has committed an error in the numbering the appeal itself. This apart, the appeal was also allowed by the Appellate Tribunal.

6.With reference to the limitation to be followed under the provisions of the Act or filing an appeal under Section 7-I of the Act, this Court elaborately considered the legal principles in W.P.No.28363 of 2013 dated 06.11.2019, and the relevant paragraphs are extracted hereunder:-

> "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."

7.In view of the principles settled in the judgment cited supra, the order impugned passed by the appellate tribunal is untenable and consequently, the order impugned dated 28.01.2014, passed by the 1st respondent in ATA No.355 (13) 2012 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
Scope Minar Core-II, 4^{th} Floor,
Lakshmi Nagar, New Delhi-110 092.

+1cc to Mr.C.Kulanthaivel , Advocate SR.No. 97780

W.P.No.30732 of 2014

A.SK(27/12/2019)