

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27370 of 2019
W.M.P.Nos.26822 & 26824 of 2019

The Commissioner
Pollachi Municipality,
Palakkad Road,
Pollachi-642 103,
Coimbatore District.

...Petitioner

vs.

1. The Assistant Provident Fund Commissioner,
Dr.Balasundaram Road,
Coimbatore-641 018.

2. The Branch Manager,
State Bank of India,
Pollachi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent relating to the impugned order of the 1st respondent bearing No.TN/RO/CBE/1529378/CC-5(24)/8F/2019 dated 22.08.2019 and quash the same and direct the Central Government Industrial Tribunal-Cum-Labour Court, Shastri Bhavan, Chennai-6 to take up the waiver and stay applications filed in E.P.F.A.No.152 of 2019 and dispose the same as expeditiously on merits.

For Petitioner : Mr.B.Anand

For Respondents : Mr.J.Sathya Narayaprasad
for R1.

O R D E R

The order dated 22.08.2019 passed under Section 8-F of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 is under challenge in the present writ petition.

2. The bank account of the writ petitioner/Municipality was attached during the pendency of the appeal filed by the writ petitioner under Section 7(O) of the Act.

3. The learned counsel for the petitioner states that the writ petitioner/Municipality is a Local Authority functioning with limited resources. The order passed under Section 7(A) of the Act was taken up by way of an appeal filed by the writ petitioner under Section 7(I) of the Act. The appeal preferred before the Central Government Industrial Tribunal cum Labour Court is pending. The learned counsel further stated that by invoking proviso clause in 7(O), an application for waiver of the pre-deposit was filed and the said application is also pending. During the pendency of the appeal as well as the waiver application, the respondent passed an order of attachment by invoking Section 8(F) of the Act. Under these circumstances, the petitioner is constrained to move the present writ petition under Article 226 of the Constitution of India.

4. The learned counsel for the first respondent states that the pre-deposit has not been made by the writ petitioner and the appeal as well as the waiver application is pending before the Central Government Industrial Tribunal cum Labour Court. Mere pendency of the waiver application is not a bar for the respondent to invoke Section 8(F) of the Act and in some cases by merely filing an appeal, the parties take undue advantage. Under these circumstances, the respondent is constrained to pass an order under Section 8(F) of the Act. Thus, there is no infirmity or illegality in passing such an order in the interest of organization and in compliance with the provision of the Act.

5. This Court is of the considered opinion that undoubtedly, a protection is provided under Section 7(O) of the Act. Section 7(O) enumerates that "No appeal by the employer shall be entertained by Tribunal unless he is deposited with it 75% of the amount due from him as determined by an Officer referred to in Section 7A".

6. Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this Section.

7. Thus, if an appeal is filed under Section 7(I) of the Act, then the deposit of 75% under Section 7(O) is mandatory. However, if an application is filed on certain genuine reasons, the said application for waiver may be considered by the Tribunal and by recording the reasons in writing, the portion of the amount can be waived for the purpose of adjudication of the appeal preferred.

8. The legal principles to be followed is that the Section must prevail over and the proviso clause is only an exception. The Rule is to be implemented strictly and the

proviso clause is to be extended only in exceptional cases, when genuine reasons are established and that the person, who is preferring an appeal is unable to deposit 75% of the amount at the time of filing of an appeal. Thus, it is not as if the tribunal can exercise its discretionary power at its own choice, and waiver can be granted uniformly in all cases. Waiver being the discretionary power must be properly exercised and reasons also have to be recorded in writing. Excess exercise of discretionary power would also result in violation of the main provision and the Tribunal must be cautious, while granting waiver or dealing with such waiver application.

9. In all circumstances, the Central Government Industrial Tribunal cum Labour Court must direct the parties filing an appeal under Section 7(I) to deposit 75% of the amount ordered. However, only on exceptional circumstances, waiver can be granted, by considering various factors as well as on genuine reasons, if any, established by the parties. In such a case, the reasons must be recorded in writing by the Tribunal under proviso clause, which is mandatory.

10. It is brought to the notice of this Court that the waiver application is also filed along with the appeal. In such circumstances, only after deciding the waiver application, the appeal is to be numbered and thereafter, it is to be admitted for further adjudication. Contrarily, by numbering the appeal under Section 7(O) of the Act, the waiver application cannot be adjudicated along with the appeal. Such a procedure is in violation of the Provisions of Section 7(O) of the Act.

11. When Section 7(O) contemplates that "No appeal by the employer shall be entertained by Tribunal unless he has deposited with it 75% of the amount due from him". Thus, no appeal can be entertained, without depositing the 75% of the amount due from the person who files an appeal. The proviso clause says that the tribunal may record its reasons in writing. Thus, a discretionary power is provided under the Act to the Tribunal to grant waiver only on exceptional circumstances and by recording reasons in writing. Therefore, whenever a waiver application is filed along with the appeal, the appeal should not be numbered by the Tribunal and the waiver application alone is to be numbered and adjudicated. Only after deciding the waiver application, the appeal can be numbered and heard by the Tribunal. If any waiver application is pending before the Tribunal, the same is directed to be heard and decided at the first instance, without causing any undue delay, as the procedure followed in the present case, is in violation of Section 7(O) of the Act.

12. Under these circumstances, this Court is inclined to pass the following orders:

i. The Central Government Industrial Tribunal cum Labour Court is directed to hear the waiver application filed by the writ petitioner within a period of four weeks from the date of receipt of a copy of this Order by advancing the hearing date. The writ petitioner as well as the respondents are directed to co-operate for the disposal of the waiver application without seeking any adjournment. The first respondent is directed to file counter within a period of one week from the date of receipt of a copy of this Order and the copy of the counter is to be issued immediately to the other parties.

ii. After deciding the waiver application filed by the writ petitioner, the main appeal is to be taken up for further hearing. The impugned order dated 22.08.2019 passed by the first respondent under Section 8(F) of the Act is stayed till the disposal of the Waiver Application by Central Government Industrial Tribunal cum Labour Court under Section 7(O) of the Act.

13. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

ssb
To

1.The Assistant Provident Fund Commissioner,
Dr.Balasundaram Road,
Coimbatore-641 018.

2.The Branch Manager,
State Bank of India,
Pollachi.

3.The Presiding Officer,
Central Government Industrial
Tribunal cum-Labour court,
Shastribhavan, Chennai.

+1cc to M/S.J.Sathya Narayana Prasad, Advocate SR.87036
+1cc to Mr.R.Arumugam, Advocate SR.80908

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RSI(CO)
CB(20/11/2019)