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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision :- 29.11.2019

\+ W.P.(C) 9029/2019 & CM No.37280/2019 (delay)

APFC EMPLOYEES' PROVIDENT FUNDS ORGANISATION ..... Petitioner

Through: Ms. Rashmi Bansal, Adv.

versus

M/S PROFOLAB ..... Respondent

Through: Mr. Nikhil Patnaik, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition filed by the APFC Employees' Provident Funds Organisation assails the order dated 05.08.2011 passed by the Employees Provident Fund Appellate Tribunal. Under the impugned order, the appeal preferred by the respondent-employer was allowed, thereby setting aside the order under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ('EPF Act' for short) directing the respondent to deposit the provident fund dues of its ex-employee Ms. Asha Nangia. The petitioner also assails the order dated 30.01.2017 whereby its belated review petition was rejected by the Tribunal.

2. The case of the petitioner is that one Ms. Asha Nangia, who had worked with the respondent organisation between 21.03.2000 to 31.03.2008 as a Front Office Manager, on 17.08.2008 made a complaint to it alleging therein that even though she had worked in

the respondent organisation for almost 8 years, she was not made a member of the Provident Fund Scheme and was therefore, deprived of the benefits of the provident fund. Upon receipt of the said complaint, the petitioner issued a show cause notice to the respondent and after considering its reply passed an order under Section 7A of the EPF Act on 10.07.2009 directing the respondent to deposit a sum of Rs.1,35,970/- towards provident fund dues of Ms.Asha Nangia. Upon a review petition being filed by respondent, the said amount was reduced by the petitioner to Rs.1,17,089/-.

3. Aggrieved by the petitioner's aforesaid direction to deposit the amount, the respondent preferred a statutory appeal before the Employees' Provident Fund Tribunal. The primary contention of the respondent before the Tribunal was that Ms. Nangia was an excluded employee in terms of Section 2(f) of the Employees Provident Fund Scheme, 1952 (hereinafter referred to as 'Scheme') as she was always drawing salary higher than the prescribed limit and was, therefore, rightly not enrolled as a member of Provident Fund Scheme. In support of its aforesaid contention, the respondent relied on Ms.Nangia's own complaint, wherein she had herself categorically stated that her salary from 21.03.2000 was Rs.7,200/- whereafter it kept on increasing from time to time. Based on this position emerging from the record that Ms. Nangia was drawing a salary of Rs.7200/- in the year 2000 which was higher than the exemption limit prescribed in Section 2(f) of the Scheme, the Tribunal vide its order dated 05.08.2011 allowed the respondent's appeal.

4. More than 5 years after the passing of the order dated 05.08.2011 allowing the respondent's appeal, the petitioner preferred a review application before the Tribunal which came to be rejected vide order dated 30.01.2017. Both the order dated 05.08.2011 and 30.01.2017 are assailed by way of the present petition which has been filed two and a half years after the dismissal of the review petition and almost eight years after the passing of original order. Though an application seeking condonation of delay has been filed along with the petition, the same contains only a bald statement that this delay had been caused due to the shifting of the petitioner's office. Neither any details, whatsoever, of the alleged shifting have been provided nor any explanation is sought to be given for this inordinate delay.

5. On merits, Ms.Bansal, learned counsel for the petitioner, submits that the impugned order is liable to be set aside as the Tribunal has allowed the respondent's appeal without appreciating the fact that the salary of Rs.7200/- being drawn by Ms. Nangia included various allowances like House Rent Allowance, which allowances had to be excluded while calculating her salary for determining whether the same fell within the exemption limit under Section 2(f) of the Scheme. She, thus, contends that once the various allowances are excluded from Ms. Nangia's salary, she would no longer be treated as an excluded employee. She, therefore, prays that the impugned orders be set aside.

6. On the other hand, learned counsel for the respondent, who appears on advance notice, while supporting the impugned orders, submits that as per the own averments of Ms. Nangia in her

complaint, her salary was more than the exemption limit prescribed in Section 2(f) of the Scheme and, therefore, she was rightly treated as an excluded employee. He also relies on Form-7A signed by Ms. Nangia on 21.03.2000 wherein she had categorically stated that she was not entitled to become a member of the Employees Provident Fund Scheme. He therefore, prays that the writ petition be dismissed.

7. I have considered the submissions of the learned counsel for the parties and with their assistance perused the record. Undoubtedly, there is no limitation prescribed for filing a writ petition but such an inordinate delay and that too without any sufficient cause cannot be condoned at the mere asking. In the present case, I find absolutely no merit in the justification sought to be given by the petitioner for this inordinate delay in approaching the Court and, therefore, the petition would be liable to be dismissed on the ground of delay and latches itself.

8. Even on merits, I see no reason to interfere with the impugned order. Once Ms. Nangia had herself stated that her salary was Rs.7200/- or more, which was admittedly higher than the prevalent exemption limits both of Rs.5000/- applicable till June 2000 and of Rs.6500/- thereafter as also the fact that she had filled form 7A stating therein that she was not eligible to become a member of Scheme, there is absolutely no reason to rely on the petitioner's bald statement that her salary was in fact lesser than the exemption limit by excluding certain allowances. Nothing has been pointed out by learned counsel for the petitioner, as to why, the allowances which formed an integral part of Ms. Nangia's salary should be excluded.

9. For the aforesaid reasons, I find no infirmity in the impugned order, warranting interference under this Court's writ jurisdiction. The petition being meritless is dismissed both on the grounds of delay as also on merits.

REKHA PALLI, J.

NOVEMBER 29, 2019

SDP