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

Date of decision: 29.01.2019

+ **W.P.(C) No.52/2015 & CM No.86/2015 (for stay)**

CENTRAL BOARD OF TRUSTEES, EPF PETITIONER

Through Ms.Inderjeet Sidhu, Adv.

versus

M/S. NANCY KRAFTS

..... RESPONDENT

Through

Mr.Rajiv Arora, Adv. with Mr.S.P.
Arora, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner impugns the order dated 23rd September, 2014 passed by the Employees Provident Fund Appellate Tribunal (hereinafter referred to as "Tribunal") in A.T.A. No.216(04) 2010. The Tribunal has vide its impugned order allowed the Respondent's appeal, thereby setting aside the orders dated 15th December, 2009 and 25th March, 2010 passed by the Regional Provident Fund Commissioner, Delhi.

2. Learned counsel for the petitioner submits that the aforesaid appeal had been dismissed by the Tribunal vide its order passed on 8th April, 2014, whereafter the impugned order has been passed allowing the same appeal which already stood dismissed and that too without even referring to its earlier order dated 8th April, 2014. She, therefore,

contends that the impugned order is liable to be set aside on this ground alone as the Tribunal did not have the power to pass a fresh order allowing the same appeal which already stood rejected by its previous order.

3. On the other hand, Mr. Rajiv Arora, learned counsel for the respondent states that the order dated 8th April, 2014, dismissing the appeal has been passed by referring to facts of some other case, which is evident from a bare perusal of para 2 of the said order as it refers to a notice issued by the Assistant Provident Fund Commissioner, Kandivali, whereas the respondent is situated in Delhi and the matter pertains to an order passed by the Regional Provident Fund Commissioner, Delhi. He further states that the said order was passed on a gazetted holiday when the Tribunal was closed and, therefore, there was no question of any hearing taking place on the said date i.e. 8th April, 2014. He submits that in these circumstances, the respondent had moved an application under Section 7-L (2) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act"), seeking review of the order dated 8th April, 2014 based on which the present impugned order has been passed. He, therefore, contends that the Tribunal was fully justified in reviewing its earlier order dated 8th April, 2014 and passing a fresh order, after it found that the earlier order dismissing the appeal had been passed on the basis of the facts of some other case. He, therefore, prays that the writ petition be dismissed.

4. I have considered the submissions of the learned counsel for the parties and perused the records. A bare perusal of the impugned order

dated 23rd September, 2014 shows that the Tribunal while dealing with the merits of the respondent's appeal, does not even refer to its earlier order dated 8th April, 2014. None of the parties have placed anything on record to show that the Tribunal had in fact reviewed its order dated 8th April, 2014 under Section 7-L (2) of the Act before proceeding to rehear the respondent's appeal. Learned counsel for the respondent has also been unable to dispute the position that there is no order passed by the Tribunal reviewing, recalling or quashing its earlier order dated 8th April, 2014 vide which the respondent's appeal was dismissed.

5. In the light of the aforesaid admitted facts, it is evident that the Tribunal has passed the impugned order dated 23rd September, 2014 allowing the respondent's appeal, even though its own earlier order dated 8th April, 2014 dismissing the respondent's appeal was still subsisting. The Tribunal could not have passed a reasoned order once again deciding the same appeal which already stood decided by its earlier order without its earlier order being recalled, reviewed or quashed by a superior court. The impugned order is thus liable to be set aside on this ground alone.

6. For the aforesaid reasons, the order dated 23rd September, 2014, passed by the Tribunal is set aside. The matter, however, cannot rest here. A bare perusal of the order dated 8th April, 2014 dismissing the respondent's appeal in itself shows that the same refers to facts pertaining to some other concern as it refers to the notice issued to the Assistant Provident Fund Commissioner, Kandivali. There is also no denial to the fact that aggrieved by the order dated 8th April, 2014, the

respondent had on 9th May, 2014 i.e. within the prescribed time, moved an application seeking review of the order dated 8th April, 2014. A copy of the Review Application has been placed on record as annexure P-5 to the writ petition. It is also an admitted position that till date no order has been passed by the Tribunal deciding the respondent's review application and, therefore, in the facts of the present case, the interest of justice demands that the review application filed by the respondent be decided on merits by the Tribunal.

7. Accordingly, while setting aside the impugned order dated 23rd September, 2014, the matter is remanded back to the Employees' Provident Fund Tribunal [now known as Central Government Industrial Tribunal (CGIT)], for passing an appropriate order in accordance with law on the respondent's review application dated 9th May, 2014. Keeping in view the fact that the matter has remained pending before the court for the last four years, the Tribunal is directed to decide the respondent's review application expeditiously after due opportunity to both sides.

8. It is made clear that this Court has not expressed any opinion on the maintainability of the review application and it will be open for the CGIT to deal with the respondent's review application on its own merits and in accordance with law.

9. The petition is allowed in the aforesaid terms with no orders as to costs.

CM No.86/2015 (for stay)

1. In view of the writ petition having been allowed, this

application does not survive for adjudication and is dismissed as such.

(REKHA PALLI)
JUDGE

JANUARY 29, 2019/aa

