

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 392 of 2020

and

W.M.P.Nos. 449 and 450 of 2020

M/s. K. Kumar Wood Work,
13-A, Iyer Lay Out,
Bank Side to Government School,
Singanallur,
Coimbatore - 641 005.

... Petitioner

-vs-

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

... Respondent

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for records of the Respondent in order bearing
Ref.No.TN/RO/CBE/PDC/CC17/1019899/14B PROCEEDINGS/E. COURT
No.1133/2019, dated 14.08.2019.

For Petitioner : Mr. S. Gunalan

For Respondent : Mr. J. Sathyanarayana Prasad

O R D E R

(through video conference)

Heard Mr. Gopalakrishnan, Learned Counsel for the Petitioner
and Mr. J.Sathyanarayana Prasad, Learned Counsel for the
Respondent, and perused the materials placed on record, apart
from the pleadings of the parties.

2. The Respondent by order No.
TN/R.O./CBE/PDC/CC17/1019899/14B Proceedings/E.Court
No.1133/2019 dated 14.08.2019 had levied penal damages against
the Petitioner under Section 14-B of the Employees' Provident
Funds and Miscellaneous Provisions Act, 1952 (hereinafter
referred to as the 'Act' for short). The Petitioner was entitled
to prefer appeal against that order under Section 7-I of the Act
within a period of 60 days from the date of its receipt in terms

of Rule 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997, before the Appellate Authority, who has been empowered to condone delay in filing such appeal for an extended period of 60 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner did not prefer any such appeal before the Appellate Authority, but has instead filed this Writ Petition on 06.01.2020 challenging the order passed by the Respondent beyond the maximum limitation period of 120 days from the date of receipt of copy of that order.

3. Learned Counsel for the Respondent has produced a copy of the postal acknowledgment card for having delivered the impugned order to the Petitioner. In the affidavit filed in support of the Writ Petition, the reason for not preferring the appeal before the Appellate Authority has been explained as follows:-

"5. I submit that against the order the Petitioner could not file appeal before the Hon'ble CGIT u/s 7A of EPF Act, 1952 since the limitation is barred. The Petitioner can condone the delay up to 60 days after expiry of 60 days of period of limitation. If the appeal is filed before the Hon'ble CGIT with a delay of 78 days beyond the extended period of 60 days, the appeal will be dismissed for the reason that he has not power to condone the delay as per Rule 7(2) of EPF Act. So the petitioner is filing this writ before Hon'ble High Court, Chennai writ jurisdiction."

Having due regard to the said contention, reference must be made to the binding decision of the Hon'ble Supreme Court of India in Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) where it has been emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India ought not to entertain Writ Petition assailing the order passed by a Statutory Authority, which was not appealed against within the maximum period of limitation before the Appellate Authority. In view of the aforesaid legal position, the Writ Petition cannot be entertained.

4. Accordingly, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

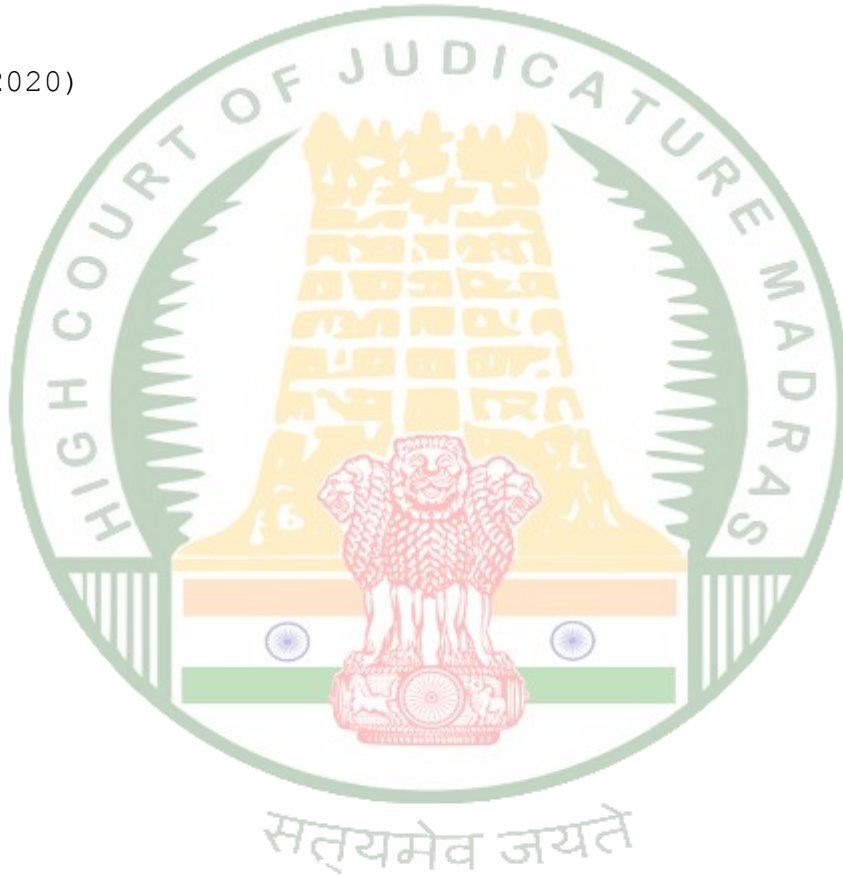
To

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

+1 CC to Mr.S. Gunalan, Advocate sr 26897.

W.P. No. 392 of 2020

VBA (CO)
SP(25/08/2020)



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