

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2020

CORAM

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

W.P. No. 26989 of 2019

Sakthi Engineering Works
and Structural Engineers and Contractors
Rep. by its Proprietor
C.S.Hariharan
No.72, Old No.136, P.V.Koil Street
Royapuram, Chennai - 13.

...Petitioner

-vs-

The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
No.37, Royapettah High Road
Chennai - 600 014.

...Respondent

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 relating to the impugned order Ref. No. T.N./CHN/CC-1/12/TN/52199/Enf/2019-20 dated 18.07.2019 made in the Review Application by the Respondent confirming the order of the Assessment Ref. No. T.N./CHN/CC-1/12/TN/52199/Enf/2019 dated 11.03.2019 passed under Section 7A of the Provident Funds and Miscellaneous Provisions Act, 1952 and quash the same and direct the respondent to hear the review petition by providing opportunity to the Petitioners.

For Petitioner : Mr. K.V.Ananthakrushnan
For Respondent : Mr. V.Sundareswaran
Senior Standing Counsel

O R D E R
(through video conference)

Heard Mr. K.V.Ananthakrushnan, Learned Counsel for the Petitioner and Mr. V.Sundareswaran, Learned Senior Standing Counsel for the Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. Learned Counsel for the Petitioner submits that the Petitioner, viz., C.S.Hariharan, has expired on 08.06.2020 after

filing of the Writ Petition and that the particulars of legal heirs who have succeeded to his estate are yet to be ascertained by him.

3. Learned Counsel appearing for the Respondent submits that the Petitioner had an effective alternative remedy to assail the order impugned in the Writ Petition before the Appellate Authority under Section 7-I of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, but the prescribed period of limitation for such appeal has now expired and this Writ Petition cannot be entertained circumventing the statutory remedy.

4. It is borne out from the record that the Writ Petition has been filed on 28.08.2019 within the prescribed period of 60 days from the receipt of impugned order dated 18.07.2019 for preferring appeal before the Appellate Authority under Rule 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997. Though it is accepted position of law that the rule of exclusion of Writ Jurisdiction by availability of an alternative remedy is one of discretion and not compulsion, there is no satisfactory explanation from the Petitioner in the affidavit filed in support of the Writ Petition for not having resorted to that statutory appeal. Since the Writ Petition has abated on the death of the Petitioner, it would suffice to observe here that it is left open to the legal heirs of the deceased Petitioner to prefer appeal against the impugned order before the Appellate Authority under Section 7-I of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, on satisfying the requisite conditions, and for the purpose of reckoning limitation, the period from the date of filing of the Writ Petition, viz., 28.08.2019 till today, viz., 16.07.2020 shall be excluded.

5. The Writ Petition stands dismissed as abated with the aforesaid observations. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CO)MDU

//True Copy//

Sub Assistant Registrar

Maya/vjt

To

The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
No.37, Royapettah High Road
Chennai - 600 014.

W.P. No. 26989 of 2019

MP (CO)
KKV/24/07/2020



WEB COPY