

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204

CWP No.11965 of 2011
DECIDED ON : 22.01.2020

SAI Sagar Enterprises Pvt. Ltd.

...Petitioner

versus

Employees P.F. Appellate Tribunal & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present : Mr. Naveen S. Bhardwaj, Advocate
for the petitioner.

Mr. Sumeet Goel, Advocate and
Mr. A.K. Ranolia, Advocate
for respondents No.2 and 3.

GIRISH AGNIHOTRI, J. (ORAL)

Present petition has been filed by the petitioner-Sai Sagar Enterprises Pvt. Ltd, *inter alia*, with the prayer to quash the order dated 31.05.2011 (Annexure P-26) and also order dated 07.02.2011 (Annexure P-24).

Learned counsel for the petitioner submits that vide order dated 07.02.2011 (Annexure P-24), passed by the Employees Provident Fund-Appellate Tribunal, the appeal filed by the petitioner was dismissed. It is submitted that the Appellate Tribunal proceeded to hear the counsel for the respondent without granting an opportunity to the petitioner to make submissions on the next date. It is further submitted that vide application dated 26.05.2011 (Annexure P-25), it has been pleaded that on 28.04.2011 the matter was not found in the list and accordingly when counsel for the petitioner had inspected the file on 11.05.2011, it was revealed that the

appeal stood dismissed on merit on 07.02.2011. The applicant further observed that one of the associates of the undersigned counsel had appeared on 04.10.2011 and had noted the date to be 28.01.2011 but it was wrongly noted as 28.04.2011. However, when this application came up for hearing before the Appellate Tribunal on 21.05.2011 the above reasons had not been even considered by the Appellate Tribunal. Vide order dated 31.05.2011 (Annexure P-26) the Tribunal refer to the judgment of Hon'ble Supreme Court reported as Inderchand Jain Vs. Moti Lal, 2009 Vol.4 CLL Supreme Court Page 662', wherein it is held that "the power of review is available in the case of discovery of new and important material or evidence which despite necessary and due diligence was not within the knowledge of the applicant or could not be produced when the order was made".

This Court is of the view that order dated 31.05.2011(Annexure P-26) as well as the order dated 07.02.2011 (Annexure P-26) deserve to be set aside. The parties to the litigation must get fair hearing to put forth their submissions. There is nothing on record nor anything has been stated in the order dated 07.02.2011 or 31.05.2011 that the appellate tribunal had recorded any reason as to why one opportunity of hearing could not be given to the petitioner. Nothing in these orders have been recorded that on previous dates or for the reasons so mentioned the Appellate Tribunal was of the view that on the basis the reason given in the application to recall the order/review the order could not be accepted.

This Court accepts the request made by the counsel for the petitioner.

Learned counsel appearing of the respondent however submits that they have very good case on merits. Their records would fairly show that the petitioner was duly liable to pay the provident fund.

This Court is of the view that appellate authority before whom the matter was pending will hear the matter on merits. It may grant two opportunities each to the parties so that matter can be decided on merits.

Ordered accordingly.

Parties are directed to appear before the Appellate Tribunal-EPFAT on 19.02.2020.

Writ petition is disposed of.

(GIRISH AGNIHOTRI)
JUDGE

January 22, 2020

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Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO