

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP No.4949 of 2012(O&M)
DECIDED ON : 27.02.2020

Regional Provident Fund Commissioner

...Petitioner

versus

M/s Ashoka Sweets, Cementry, Road, Putlighar, Amritsar and anr.

...Respondents

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present : Mr. Rajesh Hooda, Advocate for the petitioner.

Mr. Vineet Sharma, Advocate for the respondents.

GIRISH AGNIHOTRI, J. (ORAL)

Petitioner-Regional Provident Fund Commissioner, Sub Regional Office, Amritsar, has filed the present writ petition in the year 2012. Thereafter in the year 2019, amended memo of parties was placed on record wherein the petitioner namely Regional Provident Fund Commissioner, Sub Regional Office, Amritsar, was replaced by the name Central Board of Trustees, Employee Provident Fund Organization, Amritsar.

Present writ petition has been filed, *inter alia*, with the prayer

to quash the order dated 28.04.2011 (Annexure P-7) passed by the Employees' Provident Fund Appellate Tribunal, New Delhi-Appellate Tribunal.

Learned counsel for the petitioner submits that two orders were passed by the authorities. The first order dated 10.08.2001 was passed by the authority under Section 7-A1(a) of the Employees Provident Fund & Misc. Provisions Act, 1952 (for short "1952 Act") wherein the issue regarding the applicability of the Act was decided. Learned counsel further submits that on 23.11.2001, another order was passed by the authority under Section 7-A1 (b) of 1952 Act.

Learned counsel submits that in fact there was unexplained delay in filing the appeal yet both the orders were jointly challenged in appeal before the Appellate Authority and he further submits that Appellate Authorities have committed error both on procedure as well as merits by passing the impugned order dated 28.11.2011.

Notice of motion in this case was issued on 22.03.2012. The same is reproduced hereinunder:-

"Notice of motion on the issue why this matter be not remanded to the Appellate Authority for fresh consideration on all material issues.

List on 11.07.2012"

As is evident from above, the main issue raised before this Court was as to whether the matter deserves to be remanded back to the Appellate Authority for fresh consideration on all material issues.

Learned counsel for the respondents submits that in fact the order of the Appellate Authority deserves to be upheld.

After hearing both the counsel for the parties, this Court is of the view that the plea taken by the petitioner as also noticed in para 6 of the impugned order was that the core issue to be decided by the Authority was as to whether the two establishments can be treated as one if there is financial, managerial or functional integrity between the two.

Learned counsel has relied on certain documents including Annexure P-1 dated 29.04.1999. He also relied upon the judgment of this Court to submit that the petitioner had a good *prima facie* case and both the units had to be clubbed together.

However, learned counsel for the respondents on the contrary relied upon the documents which do not establish the fact that the two units would be clubbed together and it goes to the root of the matter.

This Court deems it appropriate to direct the Appellate Authority to decide the matter afresh by allowing both the parties to make their respective submissions with maximum of three opportunities each.

This Court is also of the view that since the matter initially was initiated in the year 2001 and appeal was decided in the year 2011 and the present writ petition is being decided in 2020, the issues/objections of the petitioner for condonation of delay in filing the appeal against the order dated 10.08.2001 shall not be taken into consideration by the Appellate Authority, who shall after giving an opportunity to both the parties decide the issues on merits.

Considering that the matter pertains to the year 2001, the Appellate Authority is directed to decide the case expeditiously preferably within six months and maximum within one year from the date of receipt of

certified copy of the order.

Learned counsel for the petitioner also submits that there was an amount which was deposited before the Registrar of this Court. Same be returned to the Appellate Authority to be kept in an FDR, which shall be subject to the final order passed by the Appellate Authority.

Disposed of accordingly.

(GIRISH AGNIHOTRI)
JUDGE

February 27, 2020

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