

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

LPA No.867 of 2018 (O&M)

Date of decision: February 20, 2020

M/s Hari Darshan Singh BKO

...Appellant

Versus

Central Board of Trustees

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Vivek Salathia, Advocate for the appellant.

Mr. Rajesh Hooda, Advocate for the respondent.

Rakesh Kumar Jain, J.(oral)

This Appeal is directed against the order dated 04.05.2018, passed by the learned Single Judge by which the writ petition filed by the respondents has been allowed.

In brief, the appellant is running a brick kiln, an establishment covered under the provisions of Employees Provident Fund and Misc. Provisions Act, 1952 (for short “the Act”) and it is allotted the Code No.PN/11081. The Employees Provident Fund Organization (for short “the department”) issued a show cause notice dated 3.8.2006 to the appellant for determining the EPF dues and directed it to appear before the Assessing Authority on 29.8.2006. According to the department, the appellant did not appear despite notice and ultimately the assessment order under Section 7A of the Act was passed by the Assessing Authority on 3.9.2008 determining the dues to be paid for the period from 05/2001 to 05/2008 amounting to

₹8,44,331/-. According to the appellant, the order dated 3.9.2008 was brought to their knowledge on 13.8.2010 when it communicated to them. Immediately thereafter, the appeal was filed under Section 7-A of the Act before the Employees Provident Fund Appellate Tribunal, New Delhi (for short “the Appellate Tribunal”) on the prescribed proforma/memorandum of appeal. The said appeal was contested by the department but the Appellate Tribunal allowed the appeal and set-aside the order of assessment vide its impugned order dated 12.05.2014. Aggrieved against the said order, the department filed the writ petition in this court. The writ petition was allowed on 04.05.2018 basically on the ground that there is no challenge to the assessment order dated 3.9.2008 and all that has been challenged is the communication dated 13.8.2010.

Counsel for the appellant has submitted that there is an error in appreciation of the facts on the part of the learned Single Judge who has allowed the writ petition only on the ground that there is a challenge to the communication dated 13.8.2010 and not to the order dated 3.9.2008 (assessment order). He has drawn our attention to the first paragraph of the order recorded by the Appellate Tribunal, in which it is stated that:-

“The present appeal is filed to challenge the order dated 03.09.2008 passed by the APFC, Jalandhar under Section 7A of the Employees Provident Fund & Misc. Provisions Act, 1952 determining the PF dues on the basis of the dues reported by the enforcement officer.”

Counsel for the appellant has submitted that no appeal is maintainable against the communication and the appeal is maintainable only against the assessment order. It is further submitted that had it been an appeal

against the communication dated 13.8.2010, the respondent who were present before the Tribunal, could have easily raised this issue but they knew that appeal was against the order dated 03.09.2008 (assessment order) and therefore, no such issue was raised. It is further submitted that even otherwise, no appeal is maintainable against the communication dated 13.8.2010.

Counsel for the department has though vehemently contested the argument raised by counsel for the appellant but he could not deny this fact that no appeal is maintainable against the communication rather the appeal is maintainable only against the order of assessment. However, it is argued that the appellant has cleverly challenged the communication dated 13.8.2010 before the Appellate Tribunal because otherwise the appeal filed against the order dated 03.09.2008 would have been time barred and there is no provision for condonation of delay.

In rebuttal, counsel for the appellant has submitted that if the appellant has challenged the communication dated 13.8.2010, the respondents could have raised the issue of limitation also before the learned Appellate Tribunal but no such issue was raised nor they had raised the issue that the appeal filed against the order dated 3.9.2008 is time barred. It is, thus, submitted that the respondents have now started trying to create a lacunae as they have lost in appeal before the Appellate Tribunal and raised an issue of not challenging the order dated 3.9.2008 before the learned Single Judge, who has accepted their prayer while allowing their writ petition.

We have heard counsel for the parties and are of the considered opinion that there is an error in the order of the learned Single Judge while allowing the writ petition of the department only on the ground that the order

dated 3.9.2008 is not under challenge and the appellant has challenged the communication dated 13.8.2010. It can be gathered from the first paragraph of the order of the Appellate Tribunal as to what was under challenge before the Appellate Tribunal. In so far as the argument of the counsel for the department that had the appeal been filed against the order dated 3.9.2008, it would have been barred by limitation, the department did not raise any kind of objection before the Appellate Tribunal in this regard rather it was accepted as if the appeal has been filed against the order dated 3.9.2008.

In view of aforesaid facts and circumstances, the appeal is hereby allowed, the order dated 04.05.2018, passed by the learned Single Judge is set-aside. The matter is remanded back to the learned Single Judge/writ court to decide the writ petition again, while considering the fact that the order dated 3.9.2008 has actually been challenged by the appellant.

Parties are directed to appear before the writ court on 03.04.2020.

(RAKESH KUMAR JAIN)
JUDGE

February 20, 2020
'Rajpal'

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No