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W.P.A. 15392 of 2004

The Empire Jute Company Ltd. & Anr.
Vs.
Regional Provident Fund Commissioner & Ors.

Mr. Mainak Bose
.... For the Petitioners

Mr. Shiv Chandra Prasad
.... For the Provident Fund Authorities

This writ petition is pending since 2004.

The petitioner has been enjoying an interim order dated 22nd September, 2004.

The writ petition has been filed, inter alia, challenging an order passed under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 ("the Act"). Significantly, by the impugned order the Provident Fund Authorities had raised a demand of Rs.1,87,04,611.88 against the petitioner company as far back as in 2002. Being aggrieved by the order which had been passed under Section 7A of the Act, the petitioner company had also filed a review application which was dismissed by the Authorities on 26th May, 2004.

At the outset, Mr. Prasad appearing on behalf of the respondent authorities has taken the point of the alternative remedy. He submits that the writ petition is not maintainable on the ground that the petitioner has an efficacious alternative statutory remedy by way of

Section 7I of the Act. In this context Section 7I of the Act provides as follows:

"7-I Appeals to Tribnal----(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section(3), or sub-section(4) of Section1, or Section 3, or sub-section(1) of Section7A, or Section 7B [except an order rejecting an application for review referred to in sub-section(5) thereof], or Section 7C, or Section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section(1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed."

Mr. Mainak Bose appearing on behalf of the petitioner submits that since the final order has been passed in the review petition under Section 7B the remedy of statutory appeal is not available to the petitioner. He further submits that the petitioner company has been making all payments of the Provident Fund dues subsequent to the passing of the interim order.

Ordinarily, availability of an alternative, adequate, efficacious legal remedy is a ground for a Writ Court to decline to exercise its jurisdiction. In an appropriate case inspite of availability of an alternative remedy, a Court may still exercise its jurisdiction in at least three contingencies (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged [Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors., AIR 1999 SC 22].

The intention behind the self-imposed rule is clear, if the High Court exercised the writ jurisdiction so widely as to regularly override the statutory appellate procedure they would, themselves become overburdened with a number of cases. This also defeats the intention of the legislature in enacting the statutory appeal mechanism.

Mr. Bose on behalf of the petitioner has not been able to justify any ground whatsoever which would warrant the entertaining of this writ petition. Accordingly, in view of the specific statutory appeal mechanism as stipulated hereinabove, and the additional fact that there is no public law element involved in this lis, I am not inclined to entertain this petition. There are no exceptional grounds why a Writ Court should entertain this petition. The original order passed under Section 7A of the Act having merged in the impugned order there is no substance in the other point raised by Mr. Bose.

The filing of such petitions which inevitably cheat and defraud a weaker and helpless section of society and also emasculates the spirit and object of the Act is another question which I choose not to dilate about in this proceeding.

Moreover, it is also now well settled that, as a proposition of law, once a petition is admitted it could always be dismissed on the ground of an alternative remedy [Genpact India Private Limited vs. Deputy Commissioner of Income Tax and Another, 2019 SCC OnLine Sc 1500 para 26].

Accordingly, in view of the alternative statutory remedy available to the petitioner, I am of the view that judicial prudence demands that a Writ Court ought not to exercise its jurisdiction in entertaining such a petition. For the foregoing reasons the writ petition being WPA 15392 of 2004 is dismissed.

Interim order, if any stands automatically vacated.

(Ravi Krishan Kapur, J.)