

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

906 WRIT PETITION NO.5906 OF 2021

**NALDURG MUNICIPAL COUNCIL THR ITS CHIEF OFFICER LAXMAN
MOTIRAM RATHOD
VERSUS
THE REGISTRAR CENTRAL GOVT. INDUSTRIAL TRIBUNAL MUMBAI II**

...
Advocate for Petitioner : Mr.Manwatkar Dinesh U. and Mr.Sujeet R.
Bugade

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CORAM : N. J. JAMADAR , J.

Date : 07th APRIL, 2021.

P. C. :

1. The challenge in this petition is to an order passed by the Registrar, Central Government, Industrial Tribunal, Mumbai-II, on 23rd December, 2019, whereby, the Registrar, refused to register the appeal preferred by the petitioner against the order passed by the Provident Fund, Commissioner, dated 30th September, 2019, under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (the Act 1952).

2. From the perusal of the impugned order, it becomes evident that the learned Registrar, CGIT - Labour Court, Mumbai-II, has made endeavour to decide the tenability of the appeal. It was recorded that by the impugned order dated 30th September, 2019, the authority had determined the dues under Section 7A (I) (b) of the Act, 1952 and had not decided the dispute under Section 7A (I) (a) of the Act, 1952. The

Registrar was of the view that the appeal was not tenable as the order impugned before the CGIT, was not passed under Section 7A (I) (a) of the Act, 1952.

3. Section 7A (1) of the Act 1952, reads as under :

“1 [7A. Determination of moneys due from employers.—

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the [Pension] Scheme or the Insurance Scheme, as the case may be,

and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]”

4. Section 7 (I) of the Act, 1952, provides for appeal to the Tribunal, against the notification issued by the Central Government or the order passed by the Central Government or any authority under the provisions specified thereunder. Section 7-I of the Act 1952 reads as under :

"7-I. Appeals to Tribunal.—(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 section 1, or section 3, or sub-section (1) of section 7A, 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."

5. Evidently, the order passed under Sub Section (1) of Section 7A of the Act 1952 is amenable to appeal before the Tribunal under Section 7-I. In any event, the question as to whether an appeal is tenable ought to be decided by the Tribunal. The provisions contained in the Employees Provident Funds Appellate Tribunal (Procedure) Rules, 1997, undoubtedly, vests authority in the Registrar to scrutinize the appeals and pass orders for registration. **Rule 5 of the Rules 1997**, reads as under :

"5. Presentation and scrutiny of appeals.—(1) The Registrar, or the Officer authorized by him under Rule 4, shall endorse on every appeal the date on which it is presented or deemed to have been presented under that rule and shall sign the endorsement.

(2) If, on scrutiny, the appeal is found to be in order it shall be duly registered and given a serial number.

(3) If the appeal, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Registrar may allow the party to rectify the same in his presence, and if the same defect is not formal in nature, the Registrar may allow the appellant such time to rectify the defect as he may deem fit.

(4) If the appellant fails to rectify the defect within the time allowed under sub-rule (3), the Registrar may by order and for reasons to be recorded in writing, decline to register the appeal and inform the appellant accordingly."

6. It would be contextually relevant to note that Rule 25

provides for the additional powers and duties of the Registrar. Rule 25 of the Rules, 1997 reads as under :

“25. Additional powers and duties of Registrar.—(1) In addition to the powers conferred elsewhere in these rules, the Registrar shall have the following powers and duties subject to any general or special order of the Presiding Officer, namely:--

- (i) To receive all appeals and other documents;
- (ii) To decide all questions arising out of the scrutiny of the appeals before they are registered;
- (iii) To require any appeal presented to the Tribunal to be amended in accordance with the Act and the rules;
- (iv) Subject to the directions of the Tribunal, to fix the date of first hearing of the appeals or other proceedings and issue notices thereof;
- (v) To direct any formal amendment of records;
- (vi) To order grant of copies of document to parties to the proceedings;
- (vii) To grant leave to inspect the records of the Tribunal;
- (viii) To dispose of all matters relating to the service of notices or other processes for the issue of fresh notices and for extending the time for filing such appeals and to grant time not exceeding 15 days for filing a reply or rejoinder, if any, and to place the matter before the Tribunal for appropriate order after the expiry of the aforesaid period;
- (ix) To requisition records from the custody of any court of other authority;
- (x) To receive appeals within thirty days from the date of death for substitution of legal representatives of the deceased parties during the pendency of the appeals;
- (xi) To receive and dispose of appeals for substitution, except where the substitution would involve setting aside an order of abatement;
- (xii) To receive and dispose of application by parties for return of documents.”

7. On a conjoint reading of the aforesaid provisions, it becomes evident that in the event the Registrar, on scrutiny, finds that the appeal

is defective, the registrar has to provide an opportunity to the appellant to remove the defects. The functions which are delegated to the Registrar under the rules appear to be primarily administrative and preparatory to adjudication. Refusal of registration on the count of failure to comply with objection stands on a different footing. Rules do not empower the Registrar to decide whether appeal is tenable under a particular clause of Sub Section (1) of Section 7A, when the order passed thereunder is appellable under Section 7-I of the Act 1952. The question of tenability of the appeal is, on first principles, required to be determined by the Tribunal itself.

8. In the case at hand, it does not appear that the petitioner-appellant was provided an opportunity of hearing before the registration of appeal was refused on the ground that it is not tenable.

9. In view of the provisions contained in Section 7-I of the Act, 1952, if at all, the appeal is to be held to be not tenable in a case where an order is passed under Section 7 (1) (a) of the Act, such a finding has to be recorded by the Tribunal after providing an opportunity of hearing to the appellant. The substantive right of appeal cannot be rendered nugatory by passing an order, by the Registrar, which is essentially of ministerial nature.

10. Hence the petition deserves to be allowed with a direction to

the Tribunal to consider the tenability of the appeal after providing an opportunity of hearing to the petitioner. Hence the following order :

- . The impugned order of refusal of registration of appeal stands quashed and set aside.
- . The appeal preferred by the petitioner stands restored to its original position.
- . The Central Government, Industrial Tribunal, shall decide the question of tenability of the appeal after providing an opportunity of hearing to the appellant-petitioner.

(N. J. JAMADAR)
JUDGE

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