



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA  
and  
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.1077 of 2020  
and  
C.M.P.No.13174 of 2020

M/s.K.Kumar Wood Work,  
13-A, Iyer Lay Out,  
Back Side to Government School,  
Singanallur,  
Coimbatore - 641 005.

... Appellant/Petitioner

vs.

The Assistant Provident Fund Commissioner,  
Employees Provident Fund Organization,  
Dr.Balasundaram Road,  
Coimbatore - 641 018.

... Respondent/Respondent

Prayer: Writ Appeal filed under clause 15 of the Letters Patent praying to set aside the order dated 17.08.2020 made in W.P.No.392 of 2020.

Prayer in WP.392/2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for records of the Respondent in order bearing Ref.No.TN/RO/CBE/PDC/CC17/1019899/14B Proceedings/E. Court No.1133/2019, dated 14/08/2019.

For Appellant : Mr.B.Gopalakrishnan

For Respondent : Mr.C.Kulanthaivel

JUDGMENT

(delivered by PUSHPA SATHYANARAYANA, J.)

The writ appeal has been filed challenging the order passed in W.P.No.392 of 2020 dated 17.08.2020.



2. The writ petition is directed against the order passed by the respondent/Assistant Provident Fund Commissioner for levying damages under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The said order had levied penal damages against the appellant as per the provisions. It is open to the petitioner to prefer an appeal against that order under Section 7-I of the Act within a period of 60 days from the date of its receipt in terms of Rule 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997, before the Appellate Authority. However, the petitioner did not prefer any such appeal before the Appellate Authority.

3. For better understanding, Section 7-I of the Act is extracted hereunder:

"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 7-A, or Section 7-B [except an order rejecting an application for review referred to in sub-Section (5) thereof], or Section 7-C, or Section 14-B, 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."

4. It is also admitted that the proceedings of the Commissioner dated 14.08.2019, which is impugned in the writ petition, was delivered to the appellant in time. In fact, in paragraph 5 of the affidavit filed in support of the writ petition, the appellant has stated that he could not file an appeal before the Hon'ble CGIT under Section 7-A of the EPF Act, 1952, since, it was barred by limitation. The period prescribed for condoning the delay is 60 days, after the period of original 60 days of limitation, is over. However, admittedly, there is a delay of 78 days beyond the extended period of 60 days, the appellant could not have gone before the Tribunal. The apprehension of the appellant that the appeal would be dismissed, has also been stated in the affidavit.

5. The Writ Court had placed reliance on the decision of the Hon'ble Supreme Court in Assistant Commissioner (CT) LTU, Kakinada vs. Glaxo Smith Kline Consumer Health Care Limited dated 06.05.2020 in Civil Appeal No.2413 of 2020, wherein, it has been held that the powers under Article 226 of the



Constitution of India cannot be exercised by the High Court, assailing the orders passed by a Statutory Authority, which was not appealed against within the prescribed period of limitation. The said decision is also agreed by the learned counsel for the appellant. What cannot be achieved by the appellant before the Appellate Authority, he cannot be permitted to be achieved by invoking Article 226 of the Constitution of India.

6. In view of the aforesaid legal position, the Writ Appeal cannot be entertained and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

rsi

To

The Assistant Provident Fund Commissioner,  
Employees Provident Fund Organization,  
Dr.Balasundaram Road,  
Coimbatore - 641 018.

+1cc to Mr.B.Gopalakrishnan, Advocate, S.R.No.52832  
+1cc to Mr.C.Kulanthaivel\*, Advocate, S.R.No.52678

W.A.No.1077 of 2020  
and  
C.M.P.No.13174 of 2020

NR(CO)  
CB(27/10/2021)