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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 8716 of 2022

Mamta Khatun
Vs.
Employees' Provident Fund Organization & Ors.

Mr. Subrata Dutta,
Mr. Subrata Ghosh
.... For the petitioner.

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

Affidavit of service filed in Court today is taken on record.

The instant application has been filed *inter alia* praying for an order restraining the respondents not to give any effect and/or further effect to the impugned order dated 19th April, 2021, which is appearing at page 24 of the writ petition.

Mr. Dutta, appearing for the petitioner submits that pursuant to the notice dated 19th February, 2019 issued by the respondent No.3, the petitioner had participated in the proceedings and a final order dated 19th April, 2021 was passed by the Assistant Provident Fund Commissioner (Compliance), Regional Office, Berhampore. The records would reveal that the writ petitioner had filed an application dated 20th July, 2021, *inter alia* praying for review of the order dated 19th April, 2021 as aforesaid.

Incidentally, since such application was not in form i.e. not in accordance with paragraph 79A of the Employees' Provident Fund Scheme 1952, by a communication in writing dated 29th September, 2021 issued by the Regional Provident Fund Commissioner, RO. Berhampore, the petitioner was intimated with regard to rejection of the aforesaid application. Consequent upon the aforesaid, the petitioner by a covering letter dated 23rd November, 2021 has submitted an application for review under Sub-Section (1) of Section 7B of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952. Mr. Dutta further submits that the said application is in Form 9 and as per paragraph 79A of the Employees' Provident Fund Scheme 1952. Drawing my attention to a certificate issued under Section 8 of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 dated 4/11th April, 2022 which is appearing at page 34 of the writ petition and another notice dated 19th April, 2022 which is at page 35 of the writ petition, it is submitted that without disposing of the aforesaid application for review the authorities are trying to enforce the order passed under Section 7A of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952.

It is further submitted that if the aforesaid demands are recovered from the petitioner the review application

will become infructuous.

Mr. Prasad, appearing on behalf of the respondent nos. 1, 2, 3, 5 and 6 submits that he is not aware whether the aforesaid application for review, has been disposed of or not. He, however, does not dispute the fact that the previous application had been rejected on technical grounds and the subsequent application for review has been filed by the petitioner. Mr. Prasad, further submits that since the petitioner has approached this Court, the petitioner should be directed to secure the demand raised by the respondents.

I have heard the submissions of the respective parties and considered the materials on record, I find that the previous review application has been dismissed on technical grounds. The factum of filing of the subsequent review application by the petitioner has not been disputed by Mr. Prasad. Employees' Provident Funds & Miscellaneous Provisions Act, 1952 provides a statutory remedy. Review, in my opinion, is to afford an opportunity to iron out any inconsistencies and or mistake/mistakes and/or errors which are apparent on the face of the record. In my opinion, unless the aforesaid review application is disposed of it would not be appropriate for the respondents to enforce their demands, which are at pages 34 and 35 of the writ petition.

In such circumstances, I direct the concerned

respondents to dispose of the review application filed by the petitioner within a period of eight weeks from date after giving an opportunity of hearing to the petitioner, if the same has not already been disposed of. Pending hearing of such application for review, no coercive steps should be taken against the petitioner in respect of the aforesaid demands.

Since the aforesaid application is being disposed of without calling for affidavits, the allegations made in the petition are deemed not to be admitted by the respondents.

With these observations, and/or direction the writ petition is disposed of without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)