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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 16855 of 2022

M/s. Southern Cooling Towers Private Limited
Vs.
Regional Provident Fund Commissioner – I & Anr.

Mr. Victor Chatterjee,
Mr. Barnamoy Basak
.... For the petitioner.

Ms. Aparna Banerjee
... For the respondents.

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

The present writ application has been filed, inter alia, challenging the order dated 25th August, 2021 passed under Section 14B and Section 7Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) and a demand notice dated 11th May, 2022. The total demand as appearing in the notice dated 11th May, 2022 is Rs. 75,26,240/- (Rupees Seventy Five Lac Twenty Six Thousand Two Hundred and Forty only).

Mr. Chatterjee, appearing in support of the aforesaid application submits that the aforesaid order dated 25th August, 2021 has been passed in utter non-

application of mind. There is no finding in the impugned order regarding willful delay on the part of the petitioner. The petitioner also complains that the authorities did not take into consideration that the petitioner had no intention in making delayed payments to Provident Fund authorities. He further submits that unless an interim order is passed protecting the petitioner, the petitioner shall suffer irreparable loss and/or prejudice.

Per contra, Ms. Banerjee appearing for the respondents submits that this Hon'ble Court ought not to entertain the present writ application as the petitioner has an alternative remedy in the form of an appeal and at present the Tribunal is functioning.

It is also submitted on behalf of Ms. Banerjee that the order dated 25th August, 2021 is a composite order passed under Section 14B and Section 7Q of the said Act and hence an appeal would lie in terms of Section 7I of the said Act.

Mr. Chatterjee, in reply, submits that the instant application was filed at a point of time when the Employees' Provident Fund Tribunal, being the Appellate Authority, was not functioning and, as such, there being no other alternative, the present application had been filed.

I have considered the submission made on behalf of

the advocates appearing for the respective parties and taking note of the submissions made by Ms. Banerjee, that the aforesaid order dated 25th August, 2021 is a composite order and since an Appellate Tribunal is presently functioning, I am of the view that the petitioner ought to approach the Tribunal. However, considering the fact that the present writ application has been filed at a point of time when the Tribunal was not functioning, I propose to dispose of the present writ application by passing the following order.

The respondents shall not take any coercive steps against the petitioner for a period of four weeks from date, for recovery the sums determined by order dated 25th August, 2021 under Section 14B and Section 7Q of the said Act.

The petitioner is directed to deposit a sum of Rs.30,00,000/- (Rupees Thirty Lacs) only with the respondent no.1 within a period of four weeks from date. The petitioner shall also be at liberty to approach the Tribunal, challenging the order dated 25th August, 2021, forming the subject matter of the present writ application by way of an appeal within a period of four weeks from date.

If such appeal is filed, the Tribunal shall consider and dispose of the appeal filed by the petitioner on merits upon giving an opportunity of hearing to the petitioner.

In the even, the payment as aforesaid is made and the appeal is filed, the respondent no.1 is directed to retain the deposit, so made by the petitioner, to the credit of the appeal filed by the petitioner. In such case the interim order passed herein shall continue till disposal of the appeal.

In the event, the petitioner does not make payment and/or does not file an appeal within the period indicated hereinabove, the respondents shall be liberty to take steps for recovery of the Provident Fund dues, as already determined by them.

With the aforesaid observations and /or directions, the present writ application, being WPA 16855 of 2022 is disposed of.

Since I have not invited affidavits, allegation made in the writ petition are deemed to have been denied by the respondents.

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

(Raja Basu Chowdhury, J.)