A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.20692 of 2010

(This is an application under Articles 226 and 227 of the Constitution of India read with Section 7Q and 14B of the Employees' Provident Funds and Miscellaneous Provisions Act 1952).

Regnl. P.F. Commnr-II .... ***Petitioner***

-versus-

Nalco E. Multipurpose and another .... ***Opposite Parties***

Advocates appeared in the case through Hybrid Mode:

For Petitioner : ***Mr. S.S. Mohanty, Advocate***

-versus-

For Opposite Parties : ***Mr. B. Panigrahi, ASC***
Mr. S.K. Jethy, Advocate

CORAM:
JUSTICE V. NARASINGH

DATE OF HEARING :14.07.2022
DATE OF JUDGMENT: 14.07.2022

V. Narasingh, J.

1. The Regional Provident Fund Commissioner-II, Odisha (Petitioner) passed an assessment order against the Opposite Party- M/s. NALCO Employees' Multipurpose Co-Operative

Society Limited, holding Opposite Party No.1 liable to be a sum of Rs.2,05,143/- towards 14B and sum of Rs Rs.79,902/- towards 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

2. Assailing the same the Opposite Party No.1 preferred appeal before the Appellate Authority (Employees Provident Fund Appellate Tribunal : New Delhi) which was numbered as ATA No.234(10) of 2007.

3. The present Writ Petition has been filed by the Regional Provident Fund Commissioner-II, Odisha assailing the order dated 27.07.2010 passed by the Employees Provident Fund Appellate Tribunal in ATA No.234(10) of 2007. The operative part of the order is quoted hereunder;

> **x x x x x** *"Hence ordered. The matter was remanded to the authority to assess the liability from November, 1997 till 23.02.2000. The appellant is directed to appeal before the authority within one month of this order failing which the matter will be decided as per the law. Send a copy of order to both parties and record be consigned to record room."* **x x x x x**

4. Admittedly the appeal was preferred assailing the order passed under Section 14B and imposition of penalty under Section 7-Q as is evident from the memorandum of appeal on record (Annexure-5).

5. Learned counsel for the petitioner places reliance on record Section 7-I and 7-Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter, referred to as

Act 52) which deals with appeals to the tribunal. For convenience of ready reference the provisions contained in Section 7-I and 7-Q which has a bearing on the point at issue which quoted hereunder;

> **x x x x x** ***"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.*
>
> ***7-Q. Interest Payable by the employer:-*** *The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:*
>
> *Provided that higher rate of interest specified in the scheme shall not exceed the lending rate of interest charged by any scheduled bank."* **x x x x x**

6. Relying on the provisions of Section 7-I of the Act 52 learned counsel for the petitioner submits that the order impugned remanding the matter is completely de hors the schematic arrangement of the Act 52. In as much as the Appellate Authority ought to have adjudicated the same itself instead of relegating the

matter to the authority which it is restated, is against the scheme of the Act.

7. In this context learned counsel for the petitioner places reliance on the judgment of the Apex Court in the Case of ***M/s. Arcot Textile Mills Ltd. Vs. The Regional Provident Fund Commissioner and others*** reported in ***(2013) 16 SCC Page-1.*** In the said judgment the Apex Court after taking note of the provisions of 7-I and Q of Act 52 come to the conclusion that if a composite order has been passed under Section 7-A and 7Q, as in the present case, the same shall be appealable.

8. It is further clarified that if the authority chooses to pass an independent order under Section 7Q the same is not appealable.

9. On perusal of the order passed by the Regional Provident Fund Commissioner dated 12.02.2007 it can be seen while levying damages under Section 14B the Opposite Party No.2 has been found liable to pay interest under Section 7-Q as such the order is a composite one and in the light of the law laid down by the Apex Court in the Case of ***M/s. Arcot Textile Mills Ltd (Supra)*** the same is amenable to appeal under Section 7-I and in remanding the matter to the adjudicating authority by the impugned order at Annexure-7 the Appellate Authority abdicated its responsibility and such order being against the schematic arrangement of the Act 52 is liable to be set aside being without jurisdiction.

10. Learned counsel for the Opposite Party submits that in terms of the impugned order no steps have been taken because in as much as the impugned order is not workable.

11. Accordingly the impugned order passed by the Employees Provident Fund Appellate Tribunal : New Delhi dated

27.07.2010 in ATA No.234(10) of 2007 is hereby set aside in exercise of plenary power under Article 226 of the Constitution of India and it is directed that the Appellate Authority which according to the learned counsel for the petitioner at present functioning at Bhubaneswar (CGIT-cum-Labour Court-cum-EPF Appellate Tribunal, Bhubaneswar) is called upon to hear and dispose of the appeal in accordance with law on merits.

12. The writ petition accordingly stands disposed of.

(V.Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 14th of July, 2022/Santoshi