

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.16812 of 2012

(Application under Articles-226 and 227 of the Constitution of India, 1950)

Vibhutee Kumar Gupta

....

Petitioner

-versus-

***Assistant Provident Fund Commissioner
& Others***

....

Opposite Parties

For Petitioner : Mr. B.S. Tripathy, Advocate.

***For Opposite Parties : Mr. P.K. Mishra, Advocate
Mr. S.S. Mohanty, Advocate***

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING :03.08.2022

DATE OF JUDGMENT :03.08.2022

V. Narasingh, J.

1. The petitioner herein is the Secretary of Gyanodaya Madhyamik Vidyalaya and he is assailing the Show Cause Notice issued dtd.05.07.2012 by the Employees' Provident Fund Organization by which he was called upon to deposit a sum of

Rs. 100551/- (Rupees One Lakh Five Hundred Fifty-one) towards arrear dues including interest for the period from 3/2002 to 9/2005, on account of an order passed by the Statutory Authority dtd. 31.10.2007 in exercise of power under Section-7-A of the Employees' Provident Funds and Miscellaneous Provision Act, 1952 (herein after referred to as "the Act").

2. Learned counsel for the petitioner submits with vehemence that order passed u/S. 7-A of the Act is liable to be set aside inter alia on the ground of violation of principle of natural justice.

3. Per contra, the learned counsel for the Opposite Parties-Organization submits that there is no violation of principle of natural justice as alleged and due opportunity was given to the petitioner.

4. In evidence of service of the impugned order passed under Section-7A of the Act the Opposite Parties relied on the acknowledgement due clearly indicating that the order was communicated on 23.11.2017 and was received at the end of the petitioner on 29.11.2017 by the deponent in the Writ Petition.

5. It is also submitted that though the order was passed on 31.10.2007, the petitioner chose to approach this Court against the

order of Show Cause for non-payment which is consequential to adjudication under Section-7-A of the Act only in the year, 2012.

6. It is further submitted that the order under Section-7-A of the Act is an appealable one and the petitioner having not availed the opportunity to prefer an appeal, it is not open to the petitioner to invoke the jurisdiction of this Court under Article-226 against the Show Cause for noncompliance of the order passed under Section-7-A of the Act. It is also submitted that admittedly petitioner having not assailed the order U/s. 7-A of the Act, it is not open for him to question the show cause which is consequential.

7. Learned counsel for the Provident Fund Commissioner also relied on the judgment of this Court dated 11.12.2007 passed in *Indira English Medium School and Another Vs. Regional Provident Fund Commissioner and Another* W.P.(C) No. 15497 of 2007 decided on 11.12.2007.

8. On a bare reading of the Provisions of the Act it can be seen that the order passed under Section-7-A thereof is an appealable one and Section- 7 -I of the Act provides for such appeal.

9. For convenience of reference both the Sections-7-A and 7-I of the Act are quoted hereunder;

“Section 7-A

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]*

(2) *The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely-*

(a) *enforcing the attendance of any person or examining him on oath;*

(b) *requiring the discovery and production of documents;*

(c) *receiving evidence on affidavit;*

(d) *issuing commissions for the examination of witnesses;*

And any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860)

(3) *No order [....] shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.]*

[(3-A) *Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]*

[(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry. Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the Opposite Party]

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.

Rule-7 of the Tribunal (Procedure) Rule, 1997 germane for just adjudication is quoted hereunder

7. Fee, time for filing appeal, deposit of amount due on filing appeal-

Xxx xxx xxx

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal. Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring

the appeal within the prescribed period, extend the said period by a further period of 60 days.

(3) Provided further that no appeal by the employer shall be entertained by a Tribunal unless he has [deposited with the Tribunal a Demand Draft payable in the Fund and bearing] 75 per cent of the amount due from him as determined under section-7-A.”

10. On a bare perusal of the provision contained in 7-I read with Rule-7-(2) of the Tribunal (Procedure) Rules, it can be seen that the appeal has to be filed within a period of sixty (60) days from the date of issuance of such order.

11. On an analysis of the schematic arrangement of the Act in question, it is seen that statutory period of limitation to prefer Appeal has been fixed at 60 (sixty) days and power has been conferred on the Tribunal to condone an extended period of 60 (sixty) days of delay on sufficient explanation being furnished.

12. On a plain reading of the Provision regulating appeal, it can be seen that maximum period of 120 days is envisaged as the statutory stipulation for preferring appeal.

13. Law is no longer res-integra that exercising power under Article-226 particularly relating to a statutorily fixed limitation, this Court cannot extend the period so prescribed unless there are compelling circumstances.

14. Learned counsel for the petitioner submitted that, the very fact that this Court entertained this application in the year,

2012 and issued an interim order and directed for payment of 50% of the amount awarded which has been complied, in fitness of thing the matter should be allowed to be agitated by filing an appeal condoning the delay.

15. But in the given facts, this Court does not find any merit in such submission of the learned counsel for the petitioner.

16. Accordingly, since there is no infirmity in issuance of notice which is a statutory consequence of an adjudication under Section-7A of the Act, this Court does not find any merit in the present Writ Petition. The same accordingly stands rejected. The interim order passed stands vacated.

17. Any amount paid during the pendency of the Writ Petition shall be adjusted towards the final due, of the petitioner.

18. The Writ Petition is disposed of accordingly.

19. No order as to costs.

(V.Narasingh)
Judge

*Orissa High Court, Cuttack,
Dated the 3rd of August, 2022/Balaram*