

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 12522 of 2012

***M/s. Animal feeds Diaries and
Chemicals Ltd.***

Petitioner

Mr. S. Mishra, Advocate

-versus-

***Asst. Provident Fund
Commissioner, BBSR***

Opposite Party

Mr. S.K. Pattnaik, Advocate

CORAM: JUSTICE V. NARASINGH

**ORDER
22.08.2022**

Order No.

07.

1. This matter is taken up through hybrid mode.
2. Heard Mr. Mishra learned counsel for the petitioner and Mr. S.K. Pattnaik learned senior counsel for the Assistant Provident Fund Commissioner-Opposite Party.
3. The grievance of the petitioner in the Writ Petition falls within a very narrow compass.
4. The petitioner establishment which is admittedly covered under the EPF Act has assailed the order dated 11.05.2012 passed by the Assistant Provident Fund Commissioner in exercise of his statutory function enjoined upon him under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (herein after referred to as Act 52). The ground of challenge inter alia is that there has been violation of principle of natural justice which has been succinctly stated in Paragraph 7 and 10 of the Writ Petition.

5. For convenience of ready reference the assertions made in the Paragraph 7 and 10 of the Writ Petition are extracted hereunder;

x x x x x “7. That the aforesaid enquiry was fixed to 28.03.2012 on which date the petitioner appeared before the Opp. Party and as the Opp. Party was absent no hearing was taken place on the said date and Enforcement Officer told the authorized representative of the petitioner that another date of hearing would be intimated to the petitioner but thereafter the petitioner had not received any notice in the matter and ultimately received the order dt. 11.5.2012 which was forwarded to it as per letter dt. 24.5.2012 (True Copy of the order dt. 11.5.2012 along with the forwarding letter dt. 24.5.2012 is annexed hereto as Annexure-2).

10. That from the order as Annexure-2 it is clear that the determination of the EPF dues is based on the report dt. 28.3.2013 of the Enforcement Officer which was not supplied to the petitioner before passing the order and further as has been stated earlier since on 28.03.2012 the Opp. Party was not present no enquiry was taken up on that date and thereafter the petitioner has not been noticed in the case and as such the said report was obtained and used by the Opp. Party behind the back of the petitioner and hence the impugned order as at Annexure-2 which is based on the report of the Enforcement Office is unsustainable in the eye of law and is liable to be quashed.” **x x x x x**

6. It is submitted by the learned counsel Mr. Mishra appearing for the petitioner that in view of the violation of principle

of natural justice, the case at hand merits adjudication notwithstanding the availability of alternative statutory remedy in terms of Section 7-I of the Act.

7. Learned senior counsel relying on the counter affidavit and on the recitals in the impugned order at Annexure-2 dated 11.05.2012 submits that the order was passed on the basis of the admission made on behalf of the authorized representative of the petitioner. Hence, reiterates the stand taken in the counter affidavit that no prejudice as such has been caused which warrants the interference of this Court under Article 226 of the Constitution and it is submitted that it is a dilatory tactics adopted by the petitioner to deny the legitimate claim of the poor employees.

8. The specific stand of the petitioner relating to violation of principle of natural justice extracted herein above has been answered in Paragraph 7 and 10 of the counter affidavit. The same is quoted hereunder for convenience of ready reference;

x x x x x “7. That in reply to Para 6 & 7 of the writ application it is stated that the petitioner was not prejudiced in any manner due to the delay in completion of the proceeding, he was given adequate notice and his authorized representative appeared and participated in the proceeding as well.

10. That in reply to Para-10 of the writ application it is stated that the report of the Enforcement Officer dtd.28.03.2012 was not a field enquiry report but it was a verification report on scrutiny of the returns filed by the petitioner for the period from which it was verified that the dues of the petitioner for the period was calculated to be Rs.2,06,769/- and that the petitioner has deposited Rs.1,05,823/-.

This fact has been reflected in the impugned order dtd. 02.03.2012. The petitioner does not state in the writ application that the observations made in the impugned order is in any way incorrect but makes an allegation that he is prejudiced by non-supply of the report dtd.28.03.2012.” x x x x x

9. On a conspectus of materials on record, this Court is of the view that the allegations relating to violation of principles of natural justice have been glossed over in the counter affidavit filed by the Opposite Party-Organization and hence, this Court is of the prima facie view that adequate opportunity has not been given to the petitioner during the process of adjudication as envisaged under Section 7-A of the Act.

10. As already noted in the schematic arrangement of the Act, Section 7-I provides for appeals to the tribunal. The said Section is 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.” x x x x x

11. The power to be exercised by the tribunal is also governed by the stipulation as stated in the Tribunal (Procedure) Rules, 1997, Rule 7(2) provides for a period of limitation in preferring an appeal

to the tribunal, the Provision is quoted hereunder for convenience of ready reference;

“ THE TRIBUNAL (PROCEDURE) RULES, 1997

X X X X X X X X

7(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, extended the said period by a further period of 60 days.”

X X X X X X X X

12. On perusal of the Rule 7(2) of the Procedure Rules 1997, it is clearly borne out that an appeal is to be preferred within 60 days from the date of issue of the notification the order and the same can be extended for a further period of 60 days as per the Proviso.

13. On perusal of the records, it is seen that the impugned order at Annexure-2 dated 11.05.2012 was communicated on 24.05.2012 and the petitioner approached this Court by filing the present Writ Petition on 16.07.2012 within 60 days of preferring an appeal in terms of the Tribunal Procedure Rules, 1997.

14. And, by order dated 20.07.2012 in Misc Case No.11047 of 2012, this Court had directed that no coercive action to be taken against the petitioner pursuant to the impugned order at Annexure-2 and subsequently by order dated 30.08.2013 the impugned order under Annexure-2 as well the demand notice dated 29.04.2013

issued by the Recovery Officer EPF- Organization was directed to remain stayed till the disposal of the Writ Petition.

15. On a conspectus of materials on record this court is of the considered view that directing the petitioner to prefer appeal in the given facts of case at hand would subserve the interest of justice.

16. It is ordered accordingly.

17. If the petitioner prefers an appeal within a period of 60 days from today the same shall be heard and disposed of by the Tribunal on merits. And, it shall be open to the petitioner to pray for interim relief which shall also be considered on its own merits.

18. In the peculiar facts of the case at hand, it is directed that no coercive action shall be taken against the petitioner till the period of 60 days from today.

19. The Writ Petition accordingly stands disposed of.

Santoshi

