

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13337 of 2022

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Mehrotra Engineering Works Private Limited a company incorporated under the Companies Act 1956, having its office at Bela Industrial Estate, Muzaffarpur 842005, through its Director Sunil Mehrotra aged about 62 years (male), Son of Dwarka Mehrotra, resident of West of D.M. residence, Juran Chapra Road No. 1, Muzaffarpur, P.S. Brahmpura, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The Employees Provident Fund Organisation through the Regional Provident Commissioner-II, Reginal Office Surya Complex, Laxmi Chauk, Muzaffarpur 842003.
2. The Regional Provident Commissioner- II, Reginal Office Surya Complex, Laxmi Chauk, Muzaffarpur 842003.
3. The Assistant Provident Commissioner, Reginal Office Surya Complex, Laxmi Chauk, Muzaffarpur 842003.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Mr. Rajan Prakash, Advocate Mr. Sumit Kr. Jha, Advocate Ms. Riya Giri, Advocate
For the Respondent/s	:	Mr. Rajiv Kr. Verma, Sr. Advocate Mr. Madhav Krishna, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 11-01-2023

Mr. Manish Mani, Regional Provident Fund
Commissioner-II, Muzaffarpur is present in Court in pursuant to
earlier order.

In the instant petition, petitioner has prayed for the
following reliefs:-

*i) To issue an appropriate writ, order
or direction in the nature of certiorari for
quashing order dated 25.01.2022 passed by
the Regional Provident Commissioner P II,
contained in memo no.
BR/RO/MUZ/ENF/14B/BRMUZ000136700*



0/ORDER/2188 whereby and whereunder damages of Rs. 12,39,266/- (Rs. Twelve Lakhs Thirty Nine Thousand Two Hundred and Sixty Six only) has been levied upon the petitioner under section 14B the Employees Provident fund and Miscellaneous Provisions Act, 1952.

ii) To issue an appropriate writ, order or direction in the nature of certiorari for quashing order dated 25.01.2022 passed by the Regional Provident Commissioner II, contained in memo no. BR/RO/MUZ/ENF/7Q/BRMUZ0001367000 /ORDER/2188 whereby and whereunder interest of Rs. 9,58,383/- (Rs. Nine Lakhs Fifty Eight Thousand Three Hundred and Eighty Three only) has been levied upon the petitioner under section 7Q the Employees Provident fund and Miscellaneous Provisions Act, 1952.

iii) This Hon'ble Court may adjudicate and hold that the impugned order levying damages is a non-speaking and mechanical order inasmuch as the same does not elaborate upon the circumstances which weighed with the adjudicating authority for levying the damages.

iv) This Hon'ble Court may adjudicate and hold that the petitioner cannot be condemned unheard in the violation of the maxim audi alteram partem.

v) This Hon'ble Court may adjudicate and hold that the proceeding initiated under section 14(B) and 7Q are barred by the law of limitation as the same have been initiated for the period February 2014 – March 2021?

vi) To grant any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case."



Against the impugned order the petitioner has statutory remedy of appeal under Section 7(I) of Employees Provident Fund and Miscellaneous Provisions Act, 1952. Learned counsel for the petitioner vehemently contended that he need not exhaust the statutory remedy of appeal before the Appellate Authority for the reasons that in the show cause notice the concerned authority has already determined in levying damages and ordering recovery.

Perusal of the notice it is not evident that the word of recovery on the other hand, what has been stated is as under:-

"You are entitled for an opportunity of being heard before the damages are levied. You may, therefore, avail this opportunity before the damages are levied in such case may appear either in person or through-----"

The aforesaid material does not take away the right of the petitioner so as to contend that there is a violation of principle of natural justice, therefore, this Court is not required to invoke Article 226 of the Constitution.

In the light of Hon'ble Apex Court decision in the case of **State of Jammu and Kashmir Vs. R.K. Zalpuri and others** reported in **AIR 2016 Supreme Court 3006**, Para 20 it is held as under:-

"20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation v. Dosu Aardeshir



Bhiwandiwala and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

One of the principle laid down in the aforementioned decision is that if aggrieved person has a statutory remedy of appeal in that event he is required to invoke such statutory remedy before filing writ petition.

In the light of these facts and circumstances, the petitioner has not made out case so as to interfere with the impugned order on the sole ground that it is a pre-mature writ petition. Accordingly, the present petition stands dismissed. Reserving liberty to the petitioner to invoke statutory remedy under Section



7(I) of Employees Provident Fund and Miscellaneous Provisions
Act, 1952 before the appropriate forum.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

