

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 5613 of 2023

**Plastosen Limited
Vs.
Union of India & Anr.**

For the petitioner	:	Mr. Moloy Roy Ms. Abira Dhar Pattanayak
For the PF authorities	:	Mr. Rajib Ray Ms. Sohini Kundu
Heard on	:	03.05.2023
Judgment on	:	03.05.2023

Raja Basu Chowdhury, J:

1. The instant writ application has been filed, *inter alia*, challenging the order dated 31st May 2022 passed by the Assistant Provident Fund Commissioner, Regional Office, Kolkata under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act"). The supplementary affidavit filed by the petitioner in Court today is taken on record.
2. The petitioner says that the petitioner had suffered immensely due to pandemic and the petitioner's factory has been closed since 1st August, 2019 and that most of its employees had

resigned. The petitioner was not given appropriate opportunity to submit all the documents. The computation made by the respondents is erroneous. There are procedural irregularities which has the effect of vitiating the order under Section 7A of the said Act. In the facts as stated above the petitioner prays for remand of the matter before the authorities for re-determination.

3. Mr. Ray, learned advocate appearing for the PF authorities submits that this Court ought not to entertain the aforesaid writ application as the petitioner has a remedy in the form of an appeal under Section 7I of the said Act. He says that if the petitioner approaches the appellate authority, the petitioner's case can be considered by the appellate authority. By drawing the attention of this Court to the order dated 31st March 2022, it is submitted that the petitioner had duly appeared before the Assistant Provident Fund Commissioner and had also submitted written statement. As such, it cannot be contended that the petitioner was not given opportunity to submit documents.
4. Having heard the learned advocates appearing for the respective parties and considering the materials on record, I find and as rightly pointed out by Mr. Ray, there is an appellate forum. The points canvassed by the petitioner before this Court can also be taken into consideration by the appellate authority. I have been

able to ascertain from the parties that the appellate authority is presently functioning.

5. Having regard to the submissions made by the parties, I am of the view that since, there is an appellate authority available, the petitioner should approach the appellate authority.
6. In such view of the matter if any appeal is filed by the petitioner before the appellate authority within a period of 1 month from date, the appellate authority shall hear out and dispose of the petitioner's appeal in accordance with law, on merit upon giving reasonable opportunity of hearing to the parties. The petitioner shall be at liberty to produce all documents and shall also be at liberty to pray for waiver of the pre-deposit. The petitioner shall be at entitled to raise all points, as raised in the writ application, before the appellate authority.
7. It is made clear that I have not gone into the merits of the case.
8. Since, I have not called for any affidavits, the allegations made in the writ application and the supplementary affidavit are deemed not to have been admitted by the respondents.
9. With the above observations and directions, the writ petition being WPA 5613 of 2023 is accordingly ***disposed of***.

10. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)