

21
09.08.2023
D.Hira
Court No. 12

**In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side**

FMA 3511 of 2014

**The Punjab Sarbat House
Versus
The Regional Provident Fund Commissioner & Ors.**

**Ms. Sayani Roy Chowdhury.
... for the appellant**

**Ms. Aparna Banerjee.
... for the respondents**

The present appeal is filed challenging the order of the learned Single Judge dated 11.06.2014 in W.P. No. 15174 (W) of 2014. The appellant challenged the order of Assistant Provident Fund Commissioner, the respondent no. 2 herein passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 in the writ petition on the ground that the said order was passed in violation of principles of natural justice.

Learned Judge considering the materials on record placed before him by the order dated 11.06.2014 had come to a conclusion that order under Section 7A of the said Act was passed after enquiry and materials on record placed by the authority and statutory appeal is available to the appellant and dismissed the writ petition.

Against the said order of dismissal the appellant has come out with the present appeal.

Learned counsel appearing for the appellant contended that learned Judge failed to see that order impugned in the writ petition passed by the respondent no. 2 is arbitrary, illegal and violation of natural justice. When principles of natural justice is violated the writ petition is maintainable in spite of the availability of the statutory appeal. During enquiry the authority has passed the impugned order based on the report of the officers of the respondents.

Learned counsel appearing for the appellant further submitted that the partner of the appellant was not heard properly though opportunity was given by the authority. He was not allowed to put forth his case. In violation of natural justice the appellant is entitled to invoke the writ jurisdiction and prayed for allowing the appeal.

Per contra, learned counsel appearing for the respondents submitted that impugned order was passed after enquiry and after giving reasonable opportunity to the appellant, the authority considering the materials on record and based on the enquiry passed the order. The appellant has effective alternative remedy by way of appeal and the reasons given by the appellant for non-availing the alternative remedy and approach this Court is not correct.

Learned Judge appreciated the entire materials and dismissed the writ petition and prayed for dismissal of the appeal.

Heard Ms. Sayani Roy Chowdhury, learned counsel appearing for the appellant and Ms. Aparna Banerjee, learned counsel appearing for the respondents and perused the entire materials on record.

From the materials on record it is seen that the appellant challenged the order passed under Section 7A of the said Act by the respondent no. 2. It is an admitted fact that the alternative remedy of appeal is available to the appellant to challenge the said order. It is no doubt true when the order is passed without jurisdiction or in violation of principles of natural justice, the Court can interfere when the writ petition is filed without availing the alternative remedy.

In the present case, learned Judge took note of the fact that the impugned order in the writ petition is passed after enquiry and based on the materials on record.

Learned Judge distinguished the judgments relied on by the counsel of appellant and rightly dismissed the writ petition.

The contention of the learned counsel for the appellant is that the case of the appellant was not considered properly by the authority. The said

contention has to be agitated by the appellant in the appeal.

considering all the above materials, this Court is of the view that there is no error in the order of the learned Judge warranting interference by this Court.

Learned counsel appearing for the appellant sought time to file the appeal. In view of the pendency of the writ petition and the appeal, the appellant is given three weeks time to file the appeal. If appeal is filed within the time so granted by this Court, the appellate authority shall entertain the appeal and decide the same on merits.

With these observations, the appeal is dismissed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)