

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 28843 of 2022

M/s. Associated Automobiles
Vs.
Central Government Industrial Tribunal Cum
Labour Court & Ors.

For the petitioner : Mr. Balai Paul
Ms. Ruma Sarkar

For the Provident Fund : Ms. Mitali Bhattacharya
Authorities.

Heard on : 31.03.2023

Judgment on : 31.03.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, inter alia, challenging the order dated 31st December, 2021, passed under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred as the "said Act") and the notice dated 28th February, 2022.
2. The petitioner says that the petitioner challenging the aforesaid order under Section 7A of the said Act, had filed an appeal before the Central Government Industrial Tribunal,

Kolkata being the Appellate Authority. Since during the pendency of the aforesaid appeal, the bank accounts were attached and since, there was no Presiding Officer present to hear out the petitioner's appeal, the petitioner had filed a writ application which was registered as WPA 5496 of 2022. At the time of hearing of the aforesaid writ application, the petitioner came to learn that the aforesaid appeal filed before the Central Government Industrial Tribunal, Kolkata, which was later registered as Appeal No. EPF-03 of 2022 was not maintainable for want of jurisdiction and that the proper authority was at Asansol. The factum of disposal of the appeal for want of jurisdiction, would corroborate from the order dated 7th September, 2022, passed by the Presiding Officer, Central Government Industrial Tribunal, Kolkata.

3. Assailing the orders passed under Section 7A of the said Act, the petitioner has thereafter filed a writ application before this Hon'ble Court, in as much as the time to file the appeal in terms of Rule 7(2) of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 (hereinafter referred to as the said rules) has already expired.
4. Mr. Paul, learned advocate representing the petitioner, however, in course of hearing, submits that since, the Central Government Industrial Tribunal, Kolkata, had disposed of the

petitioner's appeal for want of jurisdiction, the petitioner has challenged the said order passed under Section 7A of the said Act, before this Hon'ble Court, as the petitioner had been improperly advised, and since the time to file the appeal had expired.

5. The petitioner, however, by filing a supplementary affidavit submits that the petitioner has already filed an appeal before the Central Government Industrial Tribunal, Asansol, having jurisdiction over the matter. The petitioner says that the petitioner should be given benefit of Section 14 of the Limitation Act, since the petitioner had been pursuing its case before a wrong forum, which did not have the jurisdiction.
6. Ms. Bhattacharya learned advocate representing the respondent no.2 on the other hand submits that the petitioner was at liberty to challenge the order passed under Section 7A of the said Act, before the appropriate forum. The petitioner, however, had chosen to file the appeal before a forum which did not have the jurisdiction. The respondents cannot be faulted, for the petitioner's failure and for choosing to file the appeal before a wrong forum. She submits that since, the Central Government Industrial Tribunal, Kolkata, did not have the jurisdiction the said appeal was disposed of for want of jurisdiction. There is no irregularity on the part of the Central

Government Industrial Tribunal, Kolkata, in disposing of the said appeal.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that the Central Government Industrial Tribunal, Kolkata, having found that it did not have jurisdiction to hear out the appeal, had permitted the petitioner to withdraw the appeal for the same to be filed before appropriate forum. The petitioner has, however, filed this writ application challenging the order passed under section 7A of the said Act, apparently on an improper advice. Be that as it may, it now appears that the petitioner has filed an appeal before the Central Government Industrial Tribunal, Asansol, which according to the parties is the appropriate forum, having jurisdiction to hear out the matter. Since the petitioner has already filed an appeal, the writ application be not proceeded further.
8. The petitioner claims that the petitioner had filed the appeal before the Central Government Industrial Tribunal, Kolkata, within the statutory period of limitation. Such fact would corroborate from the endorsement made on the copy of the appeal, by the office of the Central Government Industrial Tribunal, Kolkata. The endorsement records that the appeal has been filed on 28th February 2022. Since the petitioner had been pursuing its remedy, *bona fide*, before a wrong forum, the

petitioner shall be entitled to the benefit of Section 14 of the Limitation Act 1963. In view thereof, the Central Government Industrial Tribunal, Asansol is directed to hear out the appeal on merit, having due regard to the time spent by the petitioner pursuing its remedy before a wrong forum, including this Hon'ble Court. It is, however made clear that the petitioner shall be entitled to raise all such points in the pending appeal before the Central Government Industrial Tribunal, Asansol, which have been raised by the petitioner in the present writ application.

9. If any application is made by the petitioner, praying for waiver of pre-deposit for preferring the appeal, the same shall be duly considered by the Central Government Industrial Tribunal, Asansol, having due regard to the facts of the case.
10. With the above observations and/or directions, the writ application, being WPA 28843 of 2022 is disposed of.
11. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)