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W.A. No.2858 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

and

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.A. No.2858 of 2023 & C.M.P. No.23743 of 2023

The Central Board of Trustees

EPFO, New Delhi 110 066

represented by

The Regional Provident Fund Commissioner-II

Employees' Provident Fund Organisation

Regional Office

Steel Plant Road

Dalavaipatti, Salem – 636 302

Appellant

(Cause title accepted *vide* Court's order dated 19.09.2023 made in C.M.P. No.20948 of 2023 in W.A. SR.No.116201 of 2023)

v

1 Periyar University
Periyar Palkal Nagar
Salem 636 011

2 The Registrar
Central Government Industrial Tribunal
Sastri Bhavan
Haddows Road
Nungambakkam
Chennai 600 034

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the

<https://www.mhc.tn.gov.in/judis>

order dated 24.04.2023 passed in W.P. No.19177 of 2015.



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For appellant Mr. P.K. Panneer Selvam

For R1 Mr. P. Thangaraj

R2 Tribunal

JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

For the sake of convenience and clarity, the parties will be adverted to as per their rank in this writ appeal

2 This writ appeal, preferred by the Central Board of Trustees, Employees Provident Fund Organisation, New Delhi, impugns the order dated 24.04.2023 passed by a Single Bench of this Court in W.P. No.19177 of 2015, whereby and whereunder, the writ petition filed by Periyar University, the first respondent herein, challenging the proceedings dated 26.06.2014 of the Regional Provident Fund Commissioner, Salem, in the matter of inquiry under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, was dismissed.

3 At the threshold, at the cost of verbosity, it needs to be pointed out that the appellant was not a party to the writ petition. However, the appellant preferred a miscellaneous petition in C.M.P. No.20948 of 2023



before this Bench seeking to amend the cause title as stated in the writ appeal, instead of the cause title in W.P. No.19177 of 2015, which was allowed by

this Bench on the following reasonings:

“2 Today, when the matter was taken up for hearing, it was submitted by the learned counsel for the petitioner that though the petitioner was not a party before the Single Bench, the relief could be granted only by the petitioner, in case, the petitioner in unsuccessful in the writ appeal.

3 That apart, it is stated in paragraphs 3 and 4 of the affidavit accompanying this petition that it is only the Central Board of Trustees, EPFO, which is the appropriate authority for initiating proceedings and filing appeal/petition for and on behalf of the EPFO.

4 Further, the petitioner has arrayed the Central Government Industrial Tribunal as respondent no.2, though the said Tribunal was not a party before the Single Bench.

5 The Central Government Industrial Tribunal is only a formal party and proceedings is also pending before the said forum.”

4 According to the learned counsel for the appellant, the first respondent University has already approached the second respondent Appellate Tribunal challenging the order passed under Section 14-B, *ibid.*, which was dismissed; the first respondent University, thereafter, filed a writ petition being W.P. No.19177 of 2015 challenging the proceedings under Section 7-A, *ibid.*, wherein, the Single Bench, while dismissing the writ petition, granted liberty to the first respondent University to approach the second respondent Appellate Tribunal to substantiate their stand; when an



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order passed under Section 14-B, *ibid*, has been rejected by the second respondent Appellate Tribunal, filing an appeal challenging the order passed under Section 7-A, *ibid*. may not arise. He further submitted that the second respondent Appellate Tribunal has passed an order dated 26.07.2023 for retaining a portion of the amount as the entire amount was recovered and directing a portion of the amount to be refunded to the first respondent University, which order has not been challenged by the EPFO; superadded, the appeal under Section 7(I), *ibid*., has been preferred beyond the period of limitation and hence, on that score alone, the said appeal needs to be rejected.

5 *Per contra*, the learned counsel for the first respondent University submitted that the second respondent Appellate Tribunal has passed an order admitting the appeal and as such, the second respondent Appellate Tribunal cannot, now, go into the question of limitation.

6 Heard both sides and perused the materials available on record.

7 The aforementioned facts are beyond cavil. Concededly, there is a delay on the part of the first respondent University in preferring the appeal.

Whether certain period will have to be excluded or not has got to be decided only by the second respondent Appellate Tribunal and this Court cannot direct



the second respondent Appellate Tribunal to decide the issue only on merits when the question of delay has to be decided as it is one of the issues raised by the appellant. Further, this Court cannot lose sight of the fact that the first respondent University has approached this Court after a very long time.

8 Hence, in order to give a quietus to the matter, notwithstanding the fact that there is no writ petition filed by the EPFO challenging the interim order dated 26.07.2023 passed by the second respondent Appellate Tribunal, leaving all the issues open, we direct the second respondent Appellate Tribunal to decide the appeal as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment. Further, we hasten to add that the amount already recovered from the first respondent University need not be returned. In the event of the first respondent University succeeding, the amount recovered shall be refunded with interest. It is made clear that the question of delay is bound to be canvassed by the appellant which shall be first answered by the second respondent Appellate Tribunal and thereafter, the appeal can be decided on merits.



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S. VAIDYANATHAN, J.

and

K. RAJASEKAR., J.

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With the above direction and observations, this writ appeal stands disposed of. Costs made easy. Connected C.M.P. stands closed.

(S.V.N., J.) (K.R.S., J.)
13.10.2023

cad

To

- 1 Periyar University
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- 2 The Registrar
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