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W.P.No.16871 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.16871 of 2017

and

W.M.P.No.18341 of 2017

The Assistant PF Commissioner,
Sub-Regional Office,
Employees Provident Fund Organisation,
S.J.Plaza, Swarnapuri,
Salem – 636 004.

...Petitioner

Vs.

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core – II,
4th Floor, Lakshmi Nagar,
New Delhi – 110 092.
2. M/s.Thangavelu Spinning Mills private limited,
50/NA, Dhurmapuri Main Road,
Bommidi – 635 301.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the proceedings of 1st respondent dated 19.08.2014 in ATA No.517(13) 2014 and quash the order passed therein.



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For Petitioner : M/s.M.Palanimuthu

For Respondents : Mr.P.Thangaraj, for R2

ORDER

Assailing the order of the 1st respondent, in and by which the order passed by the petitioner has been set aside, wherein the petitioner had directed the 2nd respondent to pay the contribution towards PF in respect of the allowances for which PF was not deducted and deposited, the present writ petition has been filed.

2. The case of the petitioner is that, the respondent/establishment (for brevity 'the employer') is covered under the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (for short 'the Act'). The default in payment of the Provident Fund, Insurance Fund and Employees Pension Fund contribution and administrative charges for "Terrain Allowance", which were paid to the employees for varying periods as shown in the writ petition, having not been paid, inquiry was initiated u/s 7-A of the Act to determine the amount due and payable by the employer and to that end, notice was issued for the appearance of the respondent before the authority



3. Based on the findings of the authorised officer in the enquiry held u/s 7-A of the Act, the authority held that the various allowances paid by the employer to its employees would form part of “basic wages” and has to be taken into account for the purpose of PF calculation. However, the employer having not deducted and paid the PF contribution on the various allowances and incentives paid to the employees, computed the amount payable towards PF contribution and directed the employer to pay the said amounts, as shown in the order. Challenging the aforesaid order, the employer assailed the same before the Appellate Tribunal and the Tribunal had quashed the order passed by the petitioner, which has resulted in filing this petition.

4. Learned counsel appearing for the petitioner submitted that 1st respondent failed to note that the determination of dues u/s 7-A of the Act is well within the jurisdiction of the petitioner, who had analysed in detail the nature of payment made under different categories of allowance and had held that the title of those component is only a camouflage to the actual nature of payment and held that the said components would fall under the



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definition of “basic wages”.

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5. It is the further submission of the learned counsel that the minimum wages quantified by the Government in the notification in G.O. (2D) No.34 dated 15.6.2008, put in issue before this Court, had since been dismissed and the Apex Court having held in Air Freight Ltd. – Vs – State of Karnataka (1999 (6) SCC 567) that minimum wages is not amenable to being split up and paying the wages under different components is nothing but an attempt to evade payment of requisite PF contribution.

6. It is the further submission of the learned counsel that the consolidated addition of the split up components being the minimum wage, which is payable to the employee, the same is squarely covered by the decision in Air Freight case (supra) and necessarily payment of PF contribution is to be made on the total additive value of the components, which have been split up, which have been duly quantified by the petitioner.

7. It is the further submission of the learned counsel that the employers in the same locality are treating their workers in different manner for the purpose of remitting the contributions, which is nothing but an



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attempt to wriggle out of payment of PF contribution, which is violative of Article 38 (2) of the Constitution.

8. It is the further submission of the learned counsel that Section 12 of the Act relates to the liability of the employer to pay the PF contribution and the employer is barred to reduce the contribution either directly or indirectly the wages of any employee. However, the said provision has not been properly adverted to by the Tribunal while interfering with the order passed by the petitioner, which, if remained uninterfered with, would put the employees into irreparable loss and hardship. Further, if the petitioner is not challenging the said order, it would cause great prejudice to the interest of the petitioner in not realising the dues of the workers. The order of the Tribunal is not in proper appreciation of the provisions of the Act and against the interest of the employees, requires to be interfered with.

9. Learned counsel appearing for the petitioner, in support of the aforesaid submission for challenging the order passed by the Tribunal, placed reliance on the decision of the learned single Judge of this Court in

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the case of ***The Assistant Provident Fund Commissioner & Ors. – Vs – Employees Provident Fund Appellate Tribunal & Ors. (W.P. Nos.17519/2010, etc. – Dated 21.06.2011).***

10. Per contra, learned counsel appearing for the employer contended that the petitioner has no locus standi to file the writ petition challenging the order passed by the Tribunal. It is the submission of the learned counsel that the petitioner is a quasi-judicial authority, who having determined the liability of the employer, when its order is put in issue before the Tribunal, the higher appellate forum, determination is binding on the petitioner and, therefore, the authority cannot file writ petition challenging the order of the Tribunal.

11. It is the further submission of the learned counsel that the Tribunal has considered the provisions of the Act and had come to the right conclusion that it is within the purview of the employer to decide the allowances that has to be given to each employee and it is not that all the employees would be entitled to all the allowances, as the allowances are



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paid on the basis of the work discharged and the place from where the work is discharged. Therefore, the interpretation for “basic wages” given under the Act vis-a-vis the definition under the Minimum Wages Act cannot be read to be pari material provisions as the intention and wisdom of the Parliament would be evident from the language employed in each Act and, therefore, the extrapolation given by the petitioner to include all the allowances with the ambit of “basic wages” is wholly erroneous, which has been interfered rightly by the Tribunal and, therefore, no interference is warranted with the order passed by the Tribunal.

12. In support of the aforesaid submissions, learned senior counsel for the employers placed reliance upon the following decisions :-

- i) *Mohtesham Mohd. Ismail – Vs – Spl. Director, Enforcement Directorate & Anr. (2007 (8) SCC 254); and*
- ii) *Regional Transport Authority, Namakkal Region – Vs – State Transport Appellate Tribunal, Madras & Ors. (AIR 1995 Mad 226)*



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13. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on by the learned counsel on either side.

14. The question that arises for consideration in the present petitions is

—

“Whether the petitioner, being the original authority, who, exercising its quasi-judicial power by passing order u/s 7-A or 7-B or 7-C of the Act, could challenge the order passed by the Appellate Authority reversing its finding”.

15. The petitioner, to support its stand that it has locus to file the writ petition, relied on the decision in ***W.P. Nos.17519/2010, etc. – Dated 21.06.2011***, passed by a learned single Judge of this Court in which the petition filed by the original authority, who passed the order, which had subsequently been repelled by the Tribunal, was allowed by this Court. Whether the said order could be taken to be a binding precedent requires



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deliberation for the said reason, relevant portion of the order is quoted hereunder :-

“18. Since the authorities were allowed to be represented before the Tribunal even by engaging a legal practitioner and they were also heard during the proceedings by the Tribunal and that order was directed to be issued to them, certainly they have locus standi to challenge the proceedings of the Tribunal before the High Court. The finality that is attached to the Tribunal’s order under Section 7L (4) of the PF Act will not apply to the proceedings initiated under Article 226. It must also be noted that the PF authorities are holding the amount collecting from the employee and the employer in Trust and, therefore, as Trustees, they are bound to maintain the funds of the Trust with greater vigil and for any loss caused to the funds of the Trust as Trustees, they may be held responsible. Therefore, if any order of the Tribunal is manifestly erroneous or passed without jurisdiction, the authority can challenge the same in a writ petition under Article 226 of the Constitution.”

(Emphasis Supplied)

16. From the above, it transpires that the learned single Judge has held that where the order passed by the Tribunal is manifestly erroneous or passed without jurisdiction, then the original authority could contest the



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case by filing the writ petition. In the said backdrop, it is for this Court to holistically decide the aforesaid issue for which the relevant provisions of the Act requires to be adverted to. Section 7-A of the Act deals with the determination of moneys due from employers, which provides for –

“7A. Determination of moneys due from employers. –

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order, (a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and (b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under subsection 1 shall, for the purposes of such inquiry have the same powers as are vested in a court under the code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:-

(a) enforcing the attendance of any person or



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examining him on oath:

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code 45 of 1960.

(3) No order shall be made under sub-section 1, unless the employer concerned is given a reasonable opportunity of representing his case.

(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section 1 fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(4) Where an order under sub-section 1 is passed against an employer ex-parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the



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officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.- Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section 4 unless notice thereof has been served on the opposite party.”

(Emphasis Supplied)

17. A perusal of Section 7-A reveals that the Central Provident Commissioner, any Addl. Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund



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Commissioner or any Assistant Provident Fund Commissioner, by an order, determine the amount due from any employer under the provisions of this Act and for the said purpose. Sub-section (2) to Section 7-A provides that for the aforesaid purpose, the said authority would be clothed with the same powers as are vested in a Court under the Code of Civil Procedure for trying a suit and for the purpose of the said inquiry the said inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and Section 196 of IPC. In essence, it is clear that the petitioner exercised quasi-judicial power and discharges judicial function. When its order had been set aside by the appellate authority, ordinarily in absence of any power to prefer an appeal, the petitioner is devoid of jurisdiction to file a writ petition.

18. Section 7-B relates to review of the orders passed u/s 7-A and sub-section (1) to Section 7-B provides as under :-

“7B. Review of orders passed under Section 7A. - (1)

Any person aggrieved by an order made under sub-section 1 of section 7A, but from which no appeal has been preferred under



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this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order:

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground."

19. Sub-section (1) to Section 7-B provides the person, against whom an order has been made to seek for review on the basis of new discovery or important matter or evidence coming within his knowledge and seek for review of the order passed by the officer. Similarly, the officer, who had passed the order is also clothed with power to review on his own motion any order passed by him, if he is satisfied that it is necessary so to do.

20. Section 7-C deals with determination of the escaped amount.



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Section 7-D speaks of constitution of the Industrial Tribunal by the Central Government and the jurisdiction vested upon the Tribunal to exercise its powers to deal with the appeal. Section 7-I deals with appeals to the Tribunal, which provides for the following :-

“7 – I. Appeals to the Tribunal. – (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government, or any authority, under the proviso to sub-section 3, or sub-section 4, of section 1, or section 3, or sub-section 1 of section 7A, or section 7B except an order rejecting an application for review referred to in sub-section 5 thereof, or section 7C, or section 14B may prefer an appeal to a Tribunal against such order.

(2) Every appeal under sub-section 1 shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.”

21. The appeal before a Tribunal could be filed by a person, who is aggrieved by an order passed by the Central Government or an order passed by the authority under the proviso to sub-section (3) or sub-section (4) of Section 1 or Section 3 or sub-section (1) of Section 7-A or Section 7-B or Section 7-C, except an order rejecting an application for review.



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22. The order of the Tribunal is spoken to in Section 7-L, which is the crucial provision, which determines the whole gamut of this case and for better appreciation, the same is extracted hereunder :-

“7L. Orders of Tribunal. – (1) *A Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary.*

(2) A Tribunal may, at any time within five years from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section 1 and shall make such amendment in the order if the mistake is brought to its notice by the parties to the appeal:

Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this sub-section, unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.



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(3) A Tribunal shall send a copy of every order passed under this section to the parties to the appeal.

(4) Any order made by a Tribunal finally disposing of an appeal shall not be questioned in any court of law.”

23. A cursory perusal of the above provision reveals that the Tribunal, after giving the parties an opportunity of being heard, pass orders, either confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such direction as it thinks for fresh adjudication. Further, sub-section (4) provides that any order made by the Tribunal finally disposing of an appeal shall not be questioned in any court of law.

24. A conjoint reading of Sections 7-I and 7-L shows that an appeal to the Tribunal could be filed only by the person aggrieved by the order of the authority or the Central Government and it cannot be by an authority, even higher in hierarchy to the authority, who had passed the order in the absence of any authorisation by the Central Government. Further, for the purpose of determination of moneys to be recovered, the inquiry by the authority is deemed to be a judicial proceeding as is passed by a civil court. In effect,



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the order passed by the authority, is a judicial order passed exercising quasi-judicial power.

25. Further, as evidenced above, sub-section (4) of Section 7-L makes the order passed by the Tribunal a finality, which could not be questioned in any court of law. True it is that the order of the Tribunal can be put in issue before this Court under Article 226 of the Constitution, as this Court exercises extraordinary jurisdiction. However, the only interpretation that could be given harmoniously to sub-section (4) of Section 7-L is that the authority, who had passed the order, being an authority lower in hierarchy to the Tribunal, is bound to accept the order passed by the Tribunal and is estopped from questioning the said order by filing appeal, except where the order passed is without jurisdiction and that too only if the authority has proper authorisation from the Central Government.

26. However, the other party to the *lis*, viz., the individual, cannot be estopped from taking the same on appeal before a higher judicial forum. Meaning thereby, the order passed by the Tribunal in an appeal by the



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employer, could at best be challenged only by the employer, if it is against the employer and the authority, who passed the original order is bound to act on the basis of the order passed by the Tribunal as the Tribunal is the final arbiter under the statute insofar as the authority is concerned. Further, it should be pointed out that the order passed by the original authority merges with the appellate order and the original authority is bound by the order passed by the appellate authority. Any other construction, if given to Section 7-L (4) would render the appeal remedy an empty formality as every time, the order of the original authority is interfered with by the appellate authority, the original authority, if permitted to rush before the higher judicial forum, including the High Court under Art. 226, then it would defeat the very intent of the Parliament in including Section 7-L (4). Only to put a stop to further litigative process, more specifically by the original authority, sub-section (4) to Section 7-L had put shackles on the original authority by making the order passed by the Tribunal a finality. The order could be challenged by the authority by way of a writ petition only when the authority is clothed with authorisation by the Central Government or Board of Trustee to prefer appeal against the order passed by the appellate



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authority. In the absence of any power granted by the Central Government or Board of Trustee to the authority to file appeal assailing the order passed by the appellate authority, not only the original authority is barred from filing a writ petition, but any writ petition, if entertained would be against the statute, which is not the intent of the law makers. Further, it is to be pointed out that the only situation in which the original authority could put in issue an order in appeal is when the authority who had passed the order is not vested with jurisdiction. In all other scenarios, the original order merges with the appellate order and the appellate order becomes final and the original authority is bound by the order of the appellate authority.

27. It is to be pointed out that when an authority performs quasi-judicial function, by passing orders in a matter, it neither acts in favour of the Government nor the individual, but is performing a duty endowed on it by the statute. The authority is immune from all attachments and realisations for and on behalf of the Government and is in no way attached with the order, as it is only the statutory prescription that is sought to be enforced by the authority and it has no personal afflictions to the said issue. In case, the

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order passed by the authority is not in favour of the department, at best the department, upon proper authorisation from the Government could seek further judicial recourse but it is not open to the original authority, who passed the order, without any authorisation, to challenge the order passed by the Tribunal.

28. The above view expressed by this Court finds favour in the decision of the Apex Court in *Mohtesham Mohd. Ismail case (supra)*, which clearly portrays the position in which the original authority is positioned when it comes to questioning the appellate order as has happened in the present case. For better appreciation, the relevant portion of the decision is quoted hereunder :-

“15. From the notification dated 22.09.1989, whereupon reliance has been placed by Mr. Bhan, it would appear that the officer authorized by the Central Government for the purpose of enforcing the provisions of the Act was specifically empowered to adjudicate upon the dispute. The said notification itself is a pointer to the fact that for the purpose of exercising the functions of the Central Government under one provision or the



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other, the officer concerned must be specifically empowered in that behalf. A general empowerment would, however, be permissible. Before the High Court, no notification was filed to show that the authority concerned was empowered to prefer an appeal on behalf of the Central Government. The Central Government was not even impleaded as a party to the appeal. First Respondent did not file the appeal on behalf of or representing the Central Government. It was filed in its official capacity as the adjudicating authority and not as a delegatee of the Central Government.

16. An adjudicating authority exercises a quasi-judicial power and discharges judicial functions. When its order had been set aside by the Board, ordinarily in absence of any power to prefer an appeal, it could not do so. The reasonings of the High Court that he had general power, in our opinion, is fallacious. For the purpose of exercising the functions of the Central Government, the officer concerned must be specifically authorized. Only when an officer is so specifically authorized, he can act on behalf of the Central Government and not otherwise. Only because an officer has been appointed for the purpose of acting in terms of the provisions of the Act, the same would not by itself entitle to an officer to discharge all or any of the functions of the Central Government. Even ordinarily a quasi-judicial authority can not prefer an appeal being aggrieved by and dissatisfied with the judgment of the appellate



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authority whereby and whereunder its judgment has been set aside. An adjudicating authority, although an officer of the Central Government, should act as an impartial Tribunal. An adjudicating authority, therefore, in absence of any power conferred upon it in this behalf by the Central Government, could not prefer any appeal against the order passed by the Appellate Board.

17. The Madras High Court in Rama Arangannal (supra) opined :

“4. On the question as to the maintainability of the appeal, it is seen that the Explanation to Section 54 of the Foreign Exchange Regulation Act 1973 treats only the Central Government as an aggrieved party for the purpose of filing an appeal to the High Court in respect of orders passed by the Foreign Exchange Regulation Appellate Board under that section. Therefore, only the Central Government can file and prosecute an appeal against the order of the Appellate Board, and not any other authority, In this case, the appeal has been filed by the Director of Enforcement, who is the initial authority who passed the adjudication order against the respondents and whose order has been set aside by the Appellate Board on an appeal filed by them. Therefore, the Director of Enforcement cannot be said to be aggrieved by the order of the



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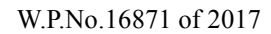
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Appellate Board merely because its order of adjudication has been set aside by the Appellate Board.”

(Emphasis Supplied)

29. The decision of the Apex Court in *Mohtesham Mohd. Ismaili case (supra)* clearly sets at naught the order passed by the learned single Judge in *W.P. Nos.17518/2010, etc. Batch, dated 21.06.2011*, which has been referred to by the petitioner and also adverted to by this Court in the earlier portion of this order. In the absence of any explicit authorisation granted to the petitioner by the Central Government to file appeal/writ petition against the order passed by the appellate authority/Industrial Tribunal, the act of the petitioner in filing the present petition is not only beyond its jurisdiction, but is also against the statute, which cannot be permitted to be continued.

30. When the appellate authority, in unequivocal terms, has rendered a categorical finding that the findings arrived at by the original authority, which are on the basis of facts, are erroneous, it does not lie in the mouth of the petitioner to contend that the act of the employer in tampering with the basic wages to its benefit is a question of law, which has to be gone into by



31. When the petitioner has no authorisation to file the writ petition on behalf of the Central Government or Board of Trustee, challenge made to the order of the appellate authority by filing the writ petition is an act



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without jurisdiction of the authority and, therefore, the writ petition deserves to be dismissed by confirming the order passed by the Tribunal.

32. For the reasons aforesaid, this Writ petition stands dismissed confirming the impugned order passed by the Tribunal. No costs. Consequently, connected Miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

To

The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core – II,
4th Floor, Lakshmi Nagar,
New Delhi – 110 092.

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