

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12104 OF 2024

Zensar Technologies Limited

.... Petitioner

V/s.

The Regional Provident Fund Commissioner-I

Pune and Anr.

.... Respondents

Ms. Meena H. Doshi, *for the Petitioner.*

CORAM : SANDEEP V. MARNE, J.

Date : 29 AUGUST 2024.

Oral judgment:

1) This Writ Petition is filed invoking jurisdiction of this Court under Article 226 of the Constitution of India to set up a challenge to the order dated 31 May 2024 passed by the Regional Provident Fund Commissioner-I, Pune under provisions of Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (**the Act**). Upon being queried as to why the Petitioner has directly approached this Court challenging order passed under Sections 7A of the Act despite availability of remedy of appeal, Ms. Doshi, the learned counsel appearing for Petitioner would submit that Petitioner filed an application for review of order dated 31 May 2024 before the Regional Provident Fund Commissioner, Pune under provisions of Section 7B of the Act and that

the Review Application has been rejected by order dated 6 August 2024. She would invite my attention sub-section (5) of Section 7B of the Act in support of her contention that the order passed in Review Petition under Section 7B is not appealable and that since no appeal can be filed against order dated 6 August 2024, Petitioner is left if no other remedy than to invoke writ jurisdiction of this Court under Article 226 of the Constitution of India.

2) The statutory scheme of the Act is such that if there is determination of monies due from employer by the Provident Fund Commissioner under Section 7A of the Act, there is a remedy of filing appeal to the Tribunal under Section 7-I of the Act. The appeal needs to be filed within a period of 60 days under the provisions of Rule 7 of The Tribunal (Procedure) Rules, 1997 (**the Rules**). Under second proviso to Rule 7(2), no appeal filed by the employer can be entertained by the Tribunal unless the employer deposits a demand draft representing 75% of amount due as determined under Section 7A of the Act.

3) Undoubtedly, power of review is conferred upon the Provident Fund Commissioner under provisions of Section 7B of the Act which reads thus:-

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 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.

(2) Every application for review under sub-section (1) shall be filed in such form and manner and within such time as may be specified in the Scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.

(4) Where the officer is of opinion that the application for review should be granted, he shall grant the same:

PROVIDED that,—

(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7A.

4) Under sub-section (5) of Section 7B, if the Review Application is rejected, such order rejecting the Review Application cannot be appealed under the Act. However, if any other order is passed in the Review Application other than rejection, such order can be appealed under the Act as if it is an original order passed under Section 7A. It is by relying on sub-section (5) of Section 7B that Ms. Doshi has submitted that Petitioner does not have remedy of filing the appeal under Section 7-I since the Review Application filed by the Petitioner under Section 7B has been rejected.

5) In my view, it is not the intention of the legislature that an employer choosing the remedy of filing a Review Application under Section 7B is to be denied the remedy of filing a substantive appeal against order passed under Section 7A. What is restricted under Section 7B(5) is filing of appeal against the decision of the Provident Fund Commissioner not to review the order. However, sub-section (5) of Section 7B cannot be

interpreted to mean that an employer seeking review of order passed under Section 7A is precluded from preferring an appeal against the original order passed under Section 7A. If sub-section (5) of Section 7B is interpreted to mean that remedy of filing appeal against Order passed under Section 7A gets barred, then in every case employers would file Review Application under Section 7B and use that pretext for not filing a statutory appeal under Section 7-I. There would be good reason for employers not to file appeal under Section 7-I and instead invoke jurisdiction of this Court under Article 226 or 227 of Constitution of India on account of second proviso Rule 7(2) which mandates compulsory deposit of 75% of the amount as a pre-condition for entertainment of appeal. Thus, for avoiding the liability to deposit 75% amount determined under Section 7A, every employer would then file an application for review under Section 7B and then invoke jurisdiction of this Court by filing a direct Writ Petition, under a specious plea that the remedy of appeal is barred under Section 7-B(5).

6) In my view therefore, the correct interpretation of sub-section (5) of Section 7B of the Act is to mean that the remedy of appeal is barred only against the decision of the Provident Fund Commissioner in not entertaining the review.

7) Though Ms. Doshi has attempted to suggest that an order rejecting the review under Section 7B would result in merger in the original order passed under Section 7A, in my view, such merger cannot occur in respect of an order passed in Review. The order passed under Section 7A would continue to subsist independently, notwithstanding rejection of Review Application, for the purpose of maintaining a challenge against same by filing a substantive appeal under Section 7-I of the Act. This is also true

because the scope of review is extremely limited as compared to the remedy of appeal before the Tribunal. While the Authority which passed original order can only examine whether there is any error apparent on face of record while deciding the Review Application under Section 7B, the Tribunal on the other hand, can re-appreciate the entire evidence and find out if the order suffers from perversity while deciding the appeal under Section 7-I of the Act. While review lies before the same authority, appeal is to the superior authority, which in the present case is an independent Tribunal headed by judicial officers. Therefore it is inconceivable that mere filig of review would amount to permanent loss of remedy of appeal.

8) Therefore, in my view, mere exercise of remedy of review under Section 7B of the Act would not forfeit the right of employer to file substantive appeal against order passed under Section 7A before the Tribunal under Section 7-I.

9) In my view therefore, Petitioner can file a substantive appeal under Section 7-I before the Tribunal to set up a challenge to the order dated 31 May 2024, which is passed under Section 7A. Mere rejection of Review Application by order dated 6 August 2024 would not act as a bar for entertainment of appeal by the Tribunal against order dated 31 May 2024. Fortunately, in the present case, the Petitioner can exercise the remedy of appeal since the maximum permissible condonable period of limitation is yet to expire. Filing of Review Application would be a valid ground for the Tribunal to condone the delay in filing the appeal.

10) I am therefore not inclined to entertain the Petition. Leaving open all the questions raised in the Petition, including the grounds raised in the

Review Application, as well as reserving the liberty for Petitioner to file a substantive appeal under Section 7-I of the Act against order dated 31 May 2024, the Writ Petition is disposed of.

11) At this stage, Ms. Doshi would submit that the Petitioner would lodge the appeal before the Tribunal within one week and shall also deposit the amount mandatorily required under second proviso to Rule 7. She would however submit that the Regional Provident Fund Organization, Pune is likely to take coercive steps against the Petitioner and has in fact addressed e-mails to that effect to the Petitioner. In that view of the matter, if the Petitioner lodges the appeal with the Tribunal and makes the statutory deposit within a period of one week from today, no coercive steps be taken against it for a period of four weeks, by which time, the Tribunal would be in a position to consider the application filed by the Petitioner for grant of interim protection.

[SANDEEP V. MARNE, J.]

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