BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.5368 of 2022
and
WMP(MD)No.4368 of 2022

M/s.A.J.C. English School & Junior College,
14, Lal Bahadur Sasthiri Road,
Kumbakonam – 612 001,
Thanjavur District.
Through its Correspondent

... Petitioner

v.

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
No.18, Sri Complex, Madurai Road,
Trichy – 625 008.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order dated 24.12.2021 passed by the Presiding Officer, Central Government Industrial Tribunal cum Labour

Court, Chennai in EPFA.No.646 of 2018 and quash the same and consequently direct the respondents not to take coercive steps.

For Petitioner : Mr.P.Chandra Bose

For Respondent : Mr.I.Robert Chandra Kumar

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ORDER

This writ petition is filed as against the interim order dated 24.12.2021 passed by the Central Government Industrial Tribunal cum Labour Court, Chennai / Appellate Tribunal under the Employees Provident Fund and Miscellaneous Provident Funds Act [herein after shall be referred to as 'the Act'] in EPFA No.646 of 2018.

2.The petitioner, a private educational institution, had failed to pay the contribution towards the Employees Provident Fund, for which the respondent has initiated proceedings under Section 14-B as well as 7-Q of the Act and imposed damages by an order dated 13.04.2018. Challenging the damages, the petitioner filed an appeal before the appellate Tribunal and also moved an application for stay. The appellate

Tribunal granted interim stay, however with a condition directing the petitioner to deposit a sum of Rs.5,00,000/- before the respondent and the said conditional order is challenged in this writ petition.

3.The learned Counsel for the petitioner submits that this appeal is filed under Section 7-I of the Act as against the damages levied under Section 14-B of the Act. Section 7-O of the Act mandates pre-deposit for entertaining an appeal filed against the determination made under Section 7-A of the Act. No such pre-deposit is contemplated for the appeals filed against the damages levied under Section 14-B of the Act. While so the appellate Tribunal has passed this conditional order to deposit a portion of the damages amount, which would amount to conditional order for pre-deposit.

4.The learned Counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in ***Shiv Herbal Research Laboratory Vs the Assistant P.F. Commissioner*** (Civil Appeal No.3001 of 2010, dated 05.04.2010). The learned Counsel has also relied on the orders passed by this Court in ***Sri Naga Nanthana Mils Ltd Vs The Presiding Officer, EPF Appellate Tribunal,*** reported in (2013) 5 LLN 667 and in ***M/s.Madhuranthagam Agricultural Producers Co-Operative Marketing Society Ltd Vs Regional Provident Fund commissioner, Chennai*** [WP.No.22860 of 2023 dated 03.08.2023], wherein, this Court by referring to the orders of the Hon'ble Supreme Court in Shiv Herbal Research Laboratory's case, has passed orders, setting aside similar conditional order passed by the appellate authority that the appellate authority cannot insist for pre-deposit for entertaining the appeal.

5.The learned Counsel for the respondent submits that the order passed by the appellate Tribunal is not an order for pre-deposit to entertain the appeal as projected by the petitioner and it is only a conditional order for grant of stay. The petitioner has moved an application for grant of stay for the operation of the orders passed under Section 14-B, otherwise the authority would recover the same. Mere pendency of appeal would not prohibit the competent authority to recover the damages. Therefore the petitioner along with his appeal moved an application for stay and the tribunal while exercising its discretionary power granted an interim order with certain condition. This cannot be termed as an order directing for pre-deposit for entertaining the appeal.

6.The learned Counsel for the respondent has also relied on the judgment of a Division Bench of the High Court of Delhi in ***Jai Balaji Security Services (Regd.) Vs A.P.F.C. Delhi (North)*** reported in (**2015 SCC OnLine Del 14099)** and the judgment of the High Court of Madhya Pradesh in ***Center for Entrepreneurship Development through its Secretary Johon Eppon Vs Regional Provident Commissioner*** reported in **2024 SCC OnLine MP 2528.**

7.This Court considered the rival submissions made and perused the materials placed on record.

8.The petitioner company has failed to pay the EPF contribution in time and therefore, the respondent has levied damages under Section

14-B of the Act. Challenging this order the petitioner company filed an appeal before the appellate Tribunal under Section 7-I of the Act. As rightly pointed out by the learned Counsel for the petitioner there is no requirement of pre-deposit amount for filing an appeal under Section 7-I of the Act as against the damages imposed under Section 14-B of the Act. But the order impugned is not an order in the form of pre-deposit for entertaining the appeal, it is only a conditional order for grant of stay. Pendency of the appeal would not prevent the authority from recovering the damages. Therefore, the petitioner along with his appeal has moved an application for grant of stay on the order imposing damages and the tribunal exercising its discretionary power granted the stay, however with condition.

9.In fact this Court has set aside a similar conditional order by following the decision of the Hon'ble Supreme Curt in Shiv Herbal Research Laboratory Vs the Assistant P.F. Commissioner. The case in Shiv Herbal Research Laboratory vs the Assistant P.F. Commissioner, before the Hon'ble Supreme Court, is an appeal preferred as against similar conditional order passed by the Bombay High Court in an appeal, which was filed as against the order passed under Section 14-B of the Act. The Bombay High Court while entertaining the appeal, had directed the petitioner therein to deposit a sum of 50% of the damages imposed under Section 14-B of the Act. The Hon'ble Supreme Court while entertaining the civil appeal has passed an interim order directing the appellant therein to deposit a sum of 25%, instead of 50% as directed the appellate tribunal and the High Court. Later the same was confirmed by the Hon'ble Supreme Court that the petitioner therein has to deposit a sum of 25% of the damages imposed on them. The relevant portion of the orders of the Hon'ble Supreme Court is extracted as under:

> "3. *Apart from the above, the provision for preferring an appeal in respect of an order Under Section 14B is contained in Section 7-I of the above Act which provides for appeals to the Tribunal, inter alia against orders passed Under Section 14-B . Subsection (2) of Section 7-I indicates that 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. There is nothing to indicate that any part of the amount awarded Under Section 14B was required to be*

deposited at the time of filing of the appeal.

4. When specific provision has been made with regard to appeals Under Section 7A and Under Section 7-O , a definite provision has been indicated for deposit of 75% of the awarded amount and there is no such provision in Section 7-I , we cannot read the principles of Section 7-O into the provisions of Section 7-I in relation to appeals Under Section 14B of the above Act.

5.The decisions cited by learned Counsel appearing for the Respondent are not of any help to the case of the Respondent, Assistant Provident Fund Commissioner in the context of this case. ***We, therefore, allow the appeal and confirm our order dated 7th July, 2008. We are informed that the said amount of 25% has been duly deposited in the Tribunal. As directed in our order of 7th July, 2008, the amount deposited is to be kept in a short term fixed deposit, which is to be renewed until the disposal of the pending appeal. The said order shall continue till the disposal of the appeal by the Tribunal.***"

10.The High Court of Madhya Pradesh has also dealt with a similar issue in ***Center for Entrepreneurship Development through its Secretary Johon Eppon Vs Regional Provident Commissioner*** reported in **2024 SCC OnLine MP 2528** and by following above of the decision of the Hon'ble Supreme Court it has held as under*:*

> *"**11.** Section 7(O) of the Act, 1952 is a different provision, which provides that if the appeal is preferred against the order passed under Section 7(A), then the Tribunal shall not entertain the appeal unless the employer has deposited 75% of the amount due. That is a precondition for entertaining the appeal, whereas in the present matter no such condition was imposed by impugned order passed by CGIT and therefore, the argument advanced by the learned counsel for petitioner are misconceived and not acceptable. Section 7(O) of the Act, 1952 puts an embargo for entertainment of the appeal by the Tribunal and requires deposition of 75% as pre-condition, if the appeal is preferred against the order passed under Section 7(A) of the Act, 1952. However, in the present matter, the Tribunal has passed the order as a condition for staying the order of recovery and therefore, the same cannot be assailed on the ground that under Section 7(O) of the Act, 1952 no condition can be imposed in respect of the order under challenge was passed in Section 14(B) of the Act, 1952. The judgment passed by the Madras High Court is not helpful to the petitioner and the judgment delivered by Delhi High Court is directly applicable to the present case. However, Apex Court in the matter of Shiv Herbal Res.*

Laboratory (supra) and Division Bench of this Court in the matter of Nav Bharat Press, Bhopal (supra), after conside Cou g the fact that orders under challenge were passed for staying the recovery under Section 14(B) of the Act, 1952, reduced the amount to be deposited for grant of stay. The Division Bench in the matter of Nav Bharat Press (supra) has held that the Tribunal has discretion to impose such a condition for staying the recovery proceedings and looking to the poor financial condition of the appellant therein, the pre-condition of depositing 35% of amount was reduced to Rs. 10.00 lakh.

12. In view of above discussion, the question is answered as that though the provision of Section 7(O) of the Act, 1952 are not applicable to an appeal preferred challenging the order passed under Section 14(B) of the Act, 1952 and no precondition can be imposed upon the appellant to deposit any amount for entertaining the appeal, but the Tribunal is having discretion to stay the recovery initiated by the Commissioner upon any condition as it deem fit including the condition of depositing a part of the amount and the same is permissible."

11.A Division Bench of High Court of Delhi in ***Jai Balaji Security Services (Regd.) Vs A.P.F.C. Delhi (North)*** reported in (**2015 SCC OnLine Del 14099)** has held as under **:**

*"**16.** But that would not mean that if an aggrieved person, who has challenged an order under Section 7-Q and/or Section 14-B of the Act moves an application before the Appellate Tribunal seeking stay of the demand raised, the Appellate Tribunal would not be empowered to pass a conditional order of stay. Whereas Section 7-I of the Act creates the forum of appeal, Section 7-O puts an embargo on the entertainment of the appeal by the Appellate Tribunal by requiring 75% of the amount due as determined under Section 7-A to be deposited; with a power vested in the Appellate Tribunal to waive or reduce the amount to be deposited. Thus, whereas an appeal has to be entertained without insisting on any pre-deposit concerning orders passed under Section 7- Q and Section 14-B of the Act, but the pendency of the appeal would not prohibit the Competent Authority to effect the recovery unless the Appellate Tribunal passes an interim order concerning the demand. This would simply mean that the Appellate Tribunal can pass conditional orders."*

12.Therefore this Court is of the view that the order passed by the appellate tribunal is only a conditional order for grant of stay of the order passed under Section 14-B of the Act. Therefore, this Court is not inclined to interfere with the orders of the appellate tribunal and accordingly, this writ petition is dismissed.

13.The appellate tribunal is directed to conclude the appeal proceedings within a period of three months from the date of receipt of a copy of this order. The appellate tribunal has permitted the petitioner to pay the amount within one month, ie., on or before 24.01.2022, for the stay. If the petitioner is inclined to avail the benefit of stay, it is open to the petitioner to pay the amount as directed by the appellate tribunal, within one month from today. No costs. Consequently connected miscellaneous petition is dismissed.

Internet : Yes / No 18.10.2024
Index : Yes / No
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To

The Assistant Provident Fund Commissioner I,
Employees Provident Fund Organization,
Regional Office,
No.18, Sri Complex, Madurai Road,
Trichy – 625 008.

Copy To

The Presiding Officer,
The Central Government Industrial Tribunal cum
Labour Court, Chennai.

B.PUGALENDHI.J.,

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