



W.P.(MD) No.5659 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.5659 of 2020

&

W.M.P(MD)No.4937 of 2020

M/s.Satyam College of Engineering and Technology
Rep by its Chairman A.Thinagar
Satyam Nagar, Aralvoimozhi
Kanyakumari District

... Petitioner

Vs.

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub Regional Office,
66 Water Tank Road
Nagercoil, 629 001

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus to call for the records on the file of the Employees Provident Fund Tribunal, Chennai in EPFA No. 52/2018/ATA 996(13)15 dated 31.01.2020 quash the same and direct the Tribunal to hear the appeal in EPFA No.52/2018/ATA 996(13)/15 on merit.



W.P.(MD) No.5659 of 2020

For Petitioner : Mr.M.Azeem
For Respondent : Mr.J.S.Murali, Standing Counsel

ORDER

The petitioner herein having been agreed by an order passed under section 7 (A) of the Employees Provident Fund and Miscellaneous Provisions Act,1952 in File No.TN/NGL/Enf/Circle 32/79132/2015 dated 10.04.2015, filed an appeal before the Employees Provident Fund Appellate Tribunal, New Delhi. But on constitution of the Regional Tribunal, the said appeal was transferred to the Employees Provident Fund Appellate Tribunal, Chennai, and was rejected on the ground of limitation by the learned Appellate Tribunal, by impugned order, dated 31.01.2020.

2. Aggrieved by the said order, present writ petition has been filed. The original order passed under section 7(A) is dated 10.04.2015 was served on the petitioner only on 25.05.2015 and to this effect a specific averment was made in the application seeking condonation of delay of 40 days. According to the learned counsel for the petitioner, along with the condone



W.P.(MD) No.5659 of 2020

delay application a medical certificate was also filed in support of the contentions raised in the condone delay application and explaining the delay of 40 days in filing the appeal. However, the learned Appellate Tribunal instead of considering the contentions raised by the petitioner about the service of the order under appeal on 25.05.2015 as well as the medical certificate placed on record, proceeded to consider the matter by taking into consideration the date of order i.e., 10.04.2015 instead of 25.05.2015 i.e. the date on which the order in appeal was stated to have been served on the petitioner. Further, the learned Appellate Tribunal also observed that the petitioner has not placed any material on record for seeking condonation of delay. Thus, the Learned Appellate Tribunal treated the appeal as the one filed 84 days beyond the period of limitation and also on the ground that the delay beyond the period of 60 days cannot be condoned by the Appellate Tribunal and thus rejected the appeal filed by the petitioner. The contentions raised by the petitioner about the service of the order under appeal on 25.05.2015 and also the medical certificate certificate placed on record were not at all considered by the Appellate Tribunal.



W.P.(MD) No.5659 of 2020

WEB COPY

3. Though this Writ Petition is of the year 2020, no counter affidavit has been filed till date.

4. It is settled legal position that the period that is consumed from the date of order to the date of issuance of certified copy or the date of service of the said order on the parties concerned is liable to be excluded while computing the period of limitation.

5. According to the learned counsel for the petitioner, if the period consumed between the date of order and service of the order under appeal is excluded the delay is well within the condonable period. If that be the case the impugned order rejecting the appeal by computing the period from 10.04.2015 cannot be sustained.

6. In the light of the above, this court is unable to accept the reasons given in the impugned order both in the manner in which the limitation period is computed as well as on the ground that the learned



W.P.(MD) No.5659 of 2020

Appellate Tribunal has not properly appreciated the medical certificate certificate stated to have been placed on record by the petitioner. Accordingly, the impugned order is set aside and the matter is remitted back to the learned Appellate Tribunal for reconsidering the condone delay application filed by the petitioner and pass orders afresh by duly excluding the period from the date of order to the date of service of the order on the petitioner and pass appropriate order in accordance with law as expeditiously as possible.

With the above observations, the Writ Petition is disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

22.02.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
kpr

To
The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub Regional Office,
66 Water Tank Road
Nagercoil, 629 001



WEB COPY



W.P.(MD) No.5659 of 2020

MUMMINENI SUDHEER KUMAR, J.

kpr

W.P.(MD)No.5659 of 2020
&
W.M.P(MD)No.4937 of 2020

22.02.2024