

14.01.2025
Ct. no. 2
Sl. No. 40
Moumita

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 30900 of 2024

Inland Waterways Authority of India

Vs.

**Employees' Provident Fund
Organization, Kolkata & Ors.**

**Mr. Malay Dhar
Mr. Amarnath Sen
Mr. Biswajit Sarkar
Mr. Pranab Kr. Ghosh
Mr. Shouvik Naskar**

.... For the Petitioners

Mr. Avijit Tiwary

**....For the Respondent
Provident Fund Authority**

Affidavit-of-service, filed in Court today, is taken on record.

Mr. Malay Dhar, learned advocate appears for the petitioner.

Mr. Avijit Tewary, learned advocate appears for the respondent Provident Fund Authority.

Through this writ petition the employer petitioner has challenged the order dated **September 26, 2024 annexure P-6 at page 117** to the writ petition. By virtue of this order the provident fund authority has claimed interest passed under **Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act,**

1952 on account of delayed deposit. This order passed under **Section 7Q of the 1952 Act** is not an appealable one under **Section 7I of the Act**. By another order the dated i.e. **September 26, 2024 annexure P-5 at page 115** to the writ petition, the provident fund authority has assessed damages in exercise of its power under **Section 14B of the 1952 Act**. Being aggrieved thereby the petitioner employer has already preferred a statutory appeal and the same is pending. Mr. Malay Dhar, learned counsel appearing for the petitioner specifically submits that the said order **at page 115** to the writ petition is not the subject matter of this writ petition and the petitioner shall pursue the pending statutory appeal.

Referring to **annexure P-7 at page 118** to the writ petition which is a part of **annexure P-4**, Mr. Malay Dhar, learned Counsel appearing for the petitioner submits that the said representation has already been submitted before the respondent no. 2. After the impugned order was passed on **September 26, 2024 at page 117** to the writ petition, the petitioner submits that due to a bona fide mistake on the part of one of its employees while putting the entry in the **Electronic Challan-cum-Return (ECR)**, the date of disbursal of salary to the employees was allegedly wrongly shown, which led the authority to pass the impugned order.

Learned counsel for the petitioner prays for an opportunity directing the respondent no. 3 to revisit the

issue covered under the impugned order dated **September 26, 2024 at page 117** to the writ petition, in the light of the said representation dated **October 22, 2024 annexure P-7 at page 118** to the writ petition and the supporting materials and records to be produced by the petitioner in support of such representation.

Mr. Avijit Tewary, learned counsel appearing for the provident fund authority submits that the impugned order has been passed on the basis of the existing materials and after affording an opportunity of hearing to the petitioner. There is no further scope for revisiting the issue. The interest adjudicated upon under **Section 7Q of 1952 Act** is an automatic process and mandatorily payable by the defaulting employer.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this court that, levying interest in exercise of its power under **Section 7Q of the 1952 Act** is an authority vested with the provident fund department under the statute, when the authority shall find that the employer had delayed in depositing its contribution before the provident fund authority. The facts then before the respondent no. 3 might have led the authority to pass the impugned order. Now, when the petitioner contends that the bona fide mistake out of which the delay was alleged to have been shown in disbursement of salaries to the employees by the establishment and the same can be established by

subsequent disclosure of materials, an opportunity can be granted to the petitioner to disclose those materials before the respondent no. 3 for revisiting the issue once again, for the ends of justice.

Learned counsel appearing for the petitioner, on instruction submits that the instant writ petition contains all the relevant materials and records of which the petitioner seeks to take support and on which the petitioner seeks to rely upon before the respondent no. 3 for revisiting the issue.

In view of the above, the petitioner is directed to serve a complete set of writ petition along with a copy of today's order upon the respondent no. 3 positively within ***two weeks*** from date.

The respondent no. 3 then upon issuing a prior hearing notice of at least seven days to the petitioner shall dispose of the said representation dated **October 22, 2024** in the light of the documents appended with the writ petition after granting an opportunity of hearing to the petitioner and by passing a reasoned order in accordance with law.

This entire exercise shall be carried out and completed by the respondent no. 3 positively within a period of ***six weeks*** from the date of receiving a copy of today's order along with a copy of the writ petition. The reasoned order shall be communicated to the petitioner

positively within a period of **one week** from the date of the said reasoned order to be passed.

Till one week after the reason order is communicated to the petitioner, the said impugned order dated **September 26, 2024 annexure P-6 at page 117** to the writ petition shall be kept in abeyance and no effect shall be given to it in any manner. It is noted that the interest amount adjudicated upon under the impugned order has already been recovered.

In the event, the reasoned order goes in favour of the petitioner then the said impugned order dated **September 26, 2024** passed under **Section 7Q** of the **1952 Act annexure P-6 at page 117** to the writ petition will automatically stand set aside and quashed and shall lose all its force and the amount recovered from the petitioner on the account of interest shall immediately be returned to the petitioner positively within a period of **three weeks** from the date of the said reasoned order to be passed.

In the event, the reasoned order confirms the finding of the authority mentioned in the said order dated **September 26, 2024 at page 117** to the writ petition, then the said impugned order shall gain all its force and shall apply with its full effect with an immediate effect and the provident fund authority shall be free to proceed in accordance with law thereunder.

Once again it is clarified that this order is passed only in respect of the proceeding under **Section 7Q of the 1952 Act** and the impugned order passed under **Section 14B of the 1952 Act** is the subject matter of the pending appeal and the appeal shall be decided in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, **WPA 30900 of 2024** stands ***disposed of***, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)