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W.P.No.37603 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.10.2024
Pronounced on	02.01.2025

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**W.P.No.37603 of 2015

Employees Provident Fund
 Organization represented by
 its Regional Provident Fund commissioner,
 Sub-Regional Office,SJ Plaza,
 Swarnapuri,Anna Salai,
 Salem 636 004.

...
 Vs.

Petitioner

1.The Presiding Officer
 Employees Provident Fund Appellate
 Tribunal, New Delhi.

2.The Shevapet urban Cooperative bank Ltd,
 Rep. By its General Manager
 576 Navalar Nedunchezian Salai,
 Shevapet, Salem 636 002.

...

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of CERTIORARI, to call for the records pertaining to ATA No.254(13) of 2013 dated 05.08.2013 and to quash the same.



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For Petitioner : Mr.P.K.Panneerselvam

For Respondents : Mr.P.Thangaraj for R2
: R1- Tribunal.

ORDER

Heard Mr.P.K.Panneerselvam, learned Counsel for the petitioner and Mr.P.Thangaraj, learned counsel for the second respondent and perused the materials available on record.

2.The Writ Petition has been filed challenging the order of the Appellate Tribunal dated 05.08.2013 made in ATA No.254(13) of 2013 and quash the same.

3.The appeal in ATA No. 254(13) of 2013 has been filed by the second respondent, the Shevapet Urban Cooperative Bank Ltd. [hereinafter referred to as Employer/Establishment], challenging the orders of the Regional Provident Fund Commissioner, Salem, dated 12.03.2012 passed under Section 14B of the Employees Provident Funds



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and Miscellaneous Provisions Act, 1952 [hereinafter referred to as Act] by levying damages on the appellant on account of delayed remittance of past accumulations on Employment Provident Fund dues. The authority concerned found that the employer had defaulted in remitting EPF dues on time and hence initiated proceedings under Section 14B of the Act and levied damages.

4. On the appeal filed before the Tribunal by the employer, the Tribunal had observed that the authority who conducted the enquiry under Section 14B of the Act did not follow the essential provisions in a proper perspective. It has further observed that the appellant has not willfully and deliberately withheld the provident fund contribution. On the finding that the delay in remittance of the provident fund was not deliberate and that the beneficiaries are not identified to claim the provident fund dues deposited by the establishment, the appeal was allowed. Now the Employers Provident Fund Organization, represented through its Regional Provident Fund Commissioner, has filed this Writ



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Petition stating that the impugned order of the 1st respondent / Appellate Authority is without jurisdiction and fallacious.

5. One of the grounds raised by the petitioner is that the 2nd respondent/establishment has filed the appeal before the 1st respondent beyond the period of limitation, and the impugned order is silent about the point of limitation and entertaining the appeal, which is barred by limitation and hence it is illegal and without jurisdiction. The other argument is that in civil consequences like levying of damages or interest, the intention does not play any active role and the concept of *mens rea* is applicable only in criminal proceedings.

5.1. The learned counsel for the petitioner placed reliance on the division bench judgment of the High Court of Bombay in ***Siddhi Engineering Vs. Regional Provident Fund Commissioner-II, Sub Regional Office*** reported in ***2024 SCC OnLine Bom 44***, in support of his contention that the jurisdiction of the High Court or the Supreme



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Court under Article 226 or 142 respectively cannot be exercised when the cause of action itself is barred by limitation. To canvass the point on the *locus standi* of the petitioner to file this Writ Petition, the learned counsel for the petitioner cited the decision of this Court held in the case of ***The Asst. Provident Fund commissioner Vs. The Presiding Officer, Employees Provident Fund Appellate Tribunal Scope Minar Core -II and Ors.***, in W.P.Nos.24631 to 24633 of 2017 batch., dated 04.08.2023 reported in ***MANU/TN/7375/2023***.

5.2. On the point of *mens rea* in respect of civil liabilities, reliance was placed on the Full Bench judgment of the Hon'ble Supreme Court held in ***Union of India Vs. M/s Dharamendra Textiles Processors and others*** reported in **2008 (13) SCC 369**, which overruled the earlier division bench judgment of the Hon'ble Supreme Court held in ***Dilip N.Shroff Vs. Joint Commissioner of Income Tax, Chennai and another*** reported in **2007 (6) SCC 329** and approved the division bench judgment of the Hon'ble Supreme Court in ***The Chairman, Sebi vs Shriram***



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Mutual Fund & Anr reported in ***2006 (5) SCC 361***.

6. The learned counsel for the second respondent submitted that the Appellate Tribunal has passed the order only after a thorough appreciation of the merits of the matter. He further submitted that the 2nd respondent establishment is a co-operative bank and it is not a profit-based organization and that co-operative institutions are very important to nation building and hence they are distinguishable from other establishments and corporations. In support of the above submission he cited the judgment of the Hon'ble Supreme Court held in ***Mohmedalli And Others vs Union Of India And Another, (AIR 1964 SC 980)***.

6.1. It is further submitted by the learned counsel for the 2nd respondent that the petitioner is very sensitive about his own order being reversed by the Tribunal and hence he had chosen to challenge the same by way of preferring this Writ Petition and that the order given on sound reasoning by the Appellate Tribunal would bind the petitioner. To support



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his above argument, reliance was placed on the judgment of this Court held in the case of *The Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Coimbatore and others Vs. Employees Provident Fund Appellate Tribunal (Ministry of Labour and Employment, Government of India) and others*, [WP.Nos.17518 of 2004 batch dated 21.06.2011]. When the order has been reversed by the Appellate Tribunal, the order of the original authority merges with the order of the Appellate Authority and hence, the Writ filed by the petitioner is not maintainable.

6.2. As the 2nd respondent, Shevapet Urban Cooperative Bank Ltd, depends on the concessions given to them it is held by this Court in *RH 153, Ramanathapuram District Cooperative Spinning Mills Ltd., Vs. Central Board of Trustees of Employees' Provident Fund Organization* reported in (2014) III LLJ 77 Mad that the waiver of damage is permissible in respect of industries like the 2nd respondent which were not established only with profit motive.



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DISCUSSION:

7. Before adverting into the point on limitation and the question of applicability of the concept of *mens rea* for civil liabilities, I feel it is fundamental to deal with the *locus standi* of the petitioner to file this Writ Petition. No doubt, the order challenged before the tribunal was the order passed the authority of the petitioner's organisation itself.

8. It is contended by the petitioner that the organization is holding the contribution paid by the employee and the employer as a trustee and hence all care and caution has to be exercised in ensuing the funds payable to the trust are not lost due to any erroneous orders passed by the Appellate Tribunal, and that too when such an order has been passed without authority.

9. In the instant case, the Appellate Authority has passed the impugned order without dealing with the question of limitation, despite



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the appeal has been filed beyond the period of limitation.

10. Without any doubt, the order passed by the Appellate Tribunal is *quasi judicial* in nature. Whenever an original authority's order is challenged before the appellate Tribunal and the tribunal might either reverse or confirm the order of the original authority and such order of the tribunal merges with the orders of the original authority. But the question is whether the position is the same even if the appellate tribunal passes such an order without authority.

11. The appeal remedy is available under Section 7-I of the Employees Provident Funds and Miscellaneous Act, 1952. The provision under Section 7-I opens with the words '*Any person aggrieved*'. For a better clarity the said provision is extracted as below:

"7-I. Appeals to 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



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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 notification or 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. "

12.The 2nd respondent establishment has preferred an appeal before the appellate Tribunal by challenging the orders levying damages passed under section 14-B of the Act. The Tribunal [Procedure] Rules-1997 would prescribe a period of 60 days under Rule 7 of the Tamil Nadu Provident Fund Rules. And the period of limitation runs from the date of the issue of the notification/order; however, for good reasons, the tribunal can exercise its discretion to extend the limitation for a further period of 60 days in view of the enabling power provided in this regard under the proviso to Rule 7 (2) of the Rules.

13.The other condition that has to be complied by the employer for preferring an appeal is to make a pre-deposit of 75 % of the amount due as determined under Section 7-A of the Act. In the instant case, the order



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under challenge is not an assessment order made under section 7-A of the Act, but it is the order levying damages under section 14-B of the Act. Hence, there is no necessity to touch upon the pre-deposit for filing an appeal challenging the order under Section 14-B of the Act. However, the period of limitation contemplated under Rule 7(2) of the Act for preferring an appeal before the tribunal is very much applicable to all orders challenged on appeal and the period of limitation is 60 days. As discretion is given to the Tribunal to relax the limitation for a further period of 60 days, the maximum period of limitation including 60 days condonation can be only for the maximum of 120 days.

14.The 2nd respondent establishment had chosen to prefer an appeal before the 1st respondent with a huge delay, which had crossed the maximum period of 120 days, and hence the 1st respondent has got no authority to entertain the appeal even at the threshold stage.

15.The Bombay High Court had an occasion to deal with the



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question of limitation in ***Siddhi Engineering Vs. Regional Provident Fund Commissioner-II, Sub Regional Office (supra)***. It is held in the above judgment that though there is no period of limitation to prefer a writ when a statutory remedy contemplates a period of limitation to prefer an appeal, a party who did not abide the period of limitation to prefer an appeal cannot be allowed to flout the Rule of Limitation by seeking the very same remedy before the High Court or the Supreme Court by invoking their writ jurisdiction.

16. In fact, the judgment of the Hon'ble Supreme Court held in ***Assistant Commissioner (CT) LTU, Kakinada Vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***(2020) 19 SCC 681***, the Hon'ble Supreme Court has held that the extraordinary jurisdiction of the Supreme Court under Article 142 and the High Court under Article 226 of the Constitution of India cannot be exercised when the cause of action is lapsed on account of expiry of limitation. Earlier the above dictum was settled by a three-Judge Bench of the Hon'ble Supreme Court, in the case



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in ***Oil and Natural Gas Corporation Ltd., (ONGC), Vs. Gujarat Energy Transmission Corporation [(2017) 5 SCC 442].***

17. Now the question whether the Appellate Tribunal can entertain an appeal which was already barred by limitation has been answered in the negative. And the next question would be, if such an appeal is entertained and an order is passed by the tribunal by reversing or modifying the order of the original authority, whether the said order can be challenged by the Employees Provident Fund Organization

18. On perusal of the order passed it appears that the tribunal has merited the order on the point of *mens rea* and other aspects. But it does not mention anything about the delay caused in filing the appeal or no order has been passed to condone the delay. As the Tribunal has passed an order in a matter which cause of action has already been barred by limitation, it is reiterated that the impugned order passed by the tribunal is without jurisdiction.



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19. Now coming to the point of *locus standi* of the organization to file an appeal challenging any order, it is appropriate to refer the judgment of this court held in ***The Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Coimbatore and others Vs. Employees Provident Fund Appellate Tribunal (Ministry of Labour and Employment, Government of India) and others***, decided on 21.06.2011 made in W.P.No.20938 of 2004 and batch., reported in MANU/TN/2251/2011. In the said judgment, his Lordship Justice K.Chandru (as he then was), had observed that the funds of the organization have to be kept with great vigilance, as it is a trust, and the trustees may be held responsible in case of any loss. So it is held that in the event of any erroneous order passed without any jurisdiction by the Tribunal, the authority of the organization can challenge the same by filing a writ petition under Article 226 of the Constitution of India. The relevant part of the judgment is extracted as under:



“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 that the PF authorities are holding the amount collecting from the employee and 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. ”

20. However, the respondents raised a contention that in a later judgment of this Court held in W.P.Nos.24631 to 24633/2017 and batch., it is held that the order of the Appellate Authority cannot be challenged by the Employees Provident Fund Organization. On a comprehensive reading of the above judgment rendered on 04.08.2023 by His Lordship



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Justice M.Dhandapani, it only conveys that ordinarily writ petitions cannot be filed challenging the orders of the Appellate tribunal by the original authority. However, an exception is carved out by holding that if the order of the Appellate Tribunal has been passed without jurisdiction, the authority can challenge the said order by getting proper authorization from the central government. The relevant part of the judgment holding the above view is given as under:

“26. 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.

27. 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 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 authority. In the absence of any power granted by the Central Government or Board of Trustee to



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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.”

21. Though it is claimed by the learned counsel for the 2nd respondent that the later order of his Lordship M. Dhandapani is in conflict with the earlier order of his Lordship Justice K.Chandru (as he then was), I find both the orders do not contradict with each other on principle. Both the orders approve the exception when the appellate authority passes an order without jurisdiction.

22. But it appears from the discussion of the orders of His Lordship Justice M.Dhandapani, that he has predominantly dealt the



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right to prefer an appeal under Section 7-I of the EPFMA Act. The order does not speak about the lack of *locus standi* on the part of the authority to maintain a writ Petition but to prefer an appeal under Section 7-I of the Act. Under paragraph No.16 of the order, the earlier order passed by his Lordship Justice K.Chandru (as he then was) has been referred and discussions were made as to whether the above judgment of his Lordship Justice K.Chandru (as he then was), can be taken as a binding precedence. Both the judgments have held that the original authority has to accept the order of the appellate Authority and the exception is only when the Appellate Authority has passed an order without jurisdiction.

23. So far as the lack of jurisdiction on the part of the appellate tribunal is concerned, both the orders do not make any distinction as to the *locus standi* of the organization to prefer a writ petition. But an addition made in the later judgment of his Lordship Justice M. Dhandapani, is to get proper authorization from the Central Government.

24. However, it is learnt that the later judgment of his Lordship



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Justice M.Dhandapani, has been stayed by a Division Bench judgment of this Court through an order passed in W.A.No.2606, 2616 and 2635 of 2024. As on today, the position of law on this vital point is only as per the dictum laid down by his lordship Justice K.Chandru (as he then was). Hence the organizations can maintain a writ petition in case the appellate authority lacks jurisdiction and passes an order without jurisdiction.

25. There cannot be any dispute that there is a limitation of 60 days contemplated under Rule 7(2) for preferring an appeal before the Tribunal and further relaxation of 60 days can be given at the discretion of the tribunal, in case it finds sufficient reasons to its satisfaction. So the maximum period, including the period that can be condoned, is only 120 days, and any appeal filed beyond 120 days is not even entertainable by the appellate tribunal and the appellate tribunal does not have any jurisdiction to take up the same.

26. It is reiterated that the Hon'ble Supreme Court has settled down the above preposition of law in ***Oil and Natural Gas Corporation***



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Ltd., (ONGC), Vs. Gujarath Energy Transmission Corporation

(*supra*) that the High Court and the Supreme Court cannot disregard the statutory limitation and entertain the writ petitions as a matter of routine, just because the appeal before the Tribunal is barred by limitation. In a later judgment held by the Bombay High Court in ***Siddhi Engineering Vs. Regional Provident Fund Commissioner-II, Sub Regional Office*** (*supra*), it was held that entertaining such writ petitions will be in violation of the dictum laid down by the three-Judge Bench of the Hon'ble Supreme Court in ***Oil and Natural Gas Corporation Ltd., (ONGC), Vs. Gujarath Energy Transmission Corporation*** (*supra*).

27. In the instant case, the order of the Appellate Tribunal does not state anything about the period of limitation and whether the appeal filed beyond the period of limitation is maintainable in the first instance. The petitioner who filed a counter in the appeal before the tribunal has also raised the point of limitation. It is stated in the counter that the 2nd respondent has taken up the issue to the tribunal after a gap of one year



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and that too without any valid grounds. The objection raised by the petitioner would also reveal that the second respondent employer has filed a petition to condone the delay and that has been stoutly opposed by the petitioner. Unfortunately, in the impugned order of the 1st respondent dated 05.08.2013, nothing has been stated about the point of limitation. As the 2nd respondent has approached the tribunal after one year, no doubt it exceeds the maximum limit of 120 days, including the limit of discretionary condonation that can be given by the tribunal, and so the appeal is seen to be barred by limitation.

28. But still the question of limitation can also be a mixed question of law and fact, in case the person who files the appeal pleads that he came to know about the impugned order itself after a delay and that he has filed the appeal within the period of limitation from the date of acquiring the knowledge. In this case, in the appeal preferred by the 2nd respondent establishment, it has been clearly stated that the appeal is filed with the delay of 395 days and that the delay should be condoned.



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When both the 2nd respondent, who was the appellant and the petitioner, who was the respondent before the 1st respondent appellate tribunal, have made a specific point on limitation by clearly admitting that the statutory limitation has also been barred, the 1st respondent is either expected to reject the appeal as not maintainable in view of the expiry of limitation or to give reasons as to why he had chosen to admit the appeal despite it has been filed after the expiry of the period of limitation. The impugned order of the 1st respondent does not speak anything on this aspect. On the face of it, the order only shows that the 1st respondent has taken the appeal without jurisdiction, and hence the petitioner has got the exceptional ground to maintain a writ petition.

29. So far as the question of *mens rea* is concerned, it is on the merits of the appeal, which can be a subject matter of consideration only if the appeal is held to be maintainable. But here is an appeal that was found to be barred by limitation, and on which the 1st respondent himself is not expected to exercise its jurisdiction. Hence, I feel it is unnecessary



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to take up the concept of *mens rea*, though it cannot be denied that the Hon'ble Supreme Court has settled down the law on *mens rea* in the case of ***Union of India Vs. M/s Dharamendra Textiles Processors and others (supra)*** that as far as the penalty inflicted under a statute is a civil liability, the *mens rea* is not an essential element. In fact, the above judgment has overruled the earlier division bench judgment of the Hon'ble Supreme Court held in ***Dilip N.Shroff Vs. Joint Commissioner of Income Tax, Chennai and another***, reported in ***2007 (6) SCC 329*** and approved the division bench judgment of the Hon'ble Supreme Court in ***The Chairman, Sebi vs Shriram Mutual Fund & Anr*** reported in ***2006 (5) SCC 361***.

30. As the petitioner has approached this Court only because the tribunal has exercised its undue jurisdiction over a cause of action which has already been barred by limitation, the writ petition filed by the petitioner is maintainable and the order passed by the 1st respondent dated 05.08.2013, is liable to be set aside.



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In the result, the Writ Petition is **allowed**. The impugned order passed by the 1st respondent in ATA No.254(13) of 2013 dated 05.08.2013 is quashed. No costs. Consequently, the connected miscellaneous petition if any, is closed.

02.01.2025

Index : Yes

Internet : Yes

Speaking order

Neutral Citation : Yes

jrs

To

The Presiding Officer

Employees Provident Fund Appellate
Tribunal, New Delhi.

2.The Shevapet urban Cooperative bank Ltd,
Rep. By its General Manager
576 Navalar Nedunchezian Salai,
Shevapet, Salem 636 002.



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