
(2016) 09 DEL CK 0195

In the Delhi High Court

Case No : W.P.(C) 2095 of 2011 and CM No. 22719 of 2016

Bright Export Limited

APPELLANT

Vs

Central Board of Trustees

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2017) 153 FLR 159 : (2017) LabLR 526 : (2017) 1 LLJ 272

Hon'ble Judges : Mr. V. Kameswar Rao, J.

Bench : Single Bench

Advocate : Mr. Keshav Mohan and Mr. Piyush Choudhary, Advocates, for the Respondent; Mr. S.P. Arora and Mr. Rajiv Arora, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. V. Kameswar Rao, J. - Rev. Pet. 293 of 2016.

This Review Petition has been filed by the petitioner seeking review of order dated March 21, 2016 whereby this Court has dismissed the petition as being bereft of any merit. I may state here, the petitioner had earlier filed an intra-court appeal being LPA No.260/2016 before the Division Bench of this Court, which was withdrawn to enable the petitioner herein, to approach this Court in review proceedings. Accordingly, the appeal was dismissed as withdrawn on April 27, 2016. Subsequent thereto, it appears CM No.18607/2016 was filed by the petitioner in the LPA No.260/2016, seeking a direction for granting time to file review petition having regard to the limitation. In the said application, the Division Bench has passed the following order:-

"CM APPL.18607/2016

After some hearing, learned counsel sought liberty to withdraw the application but submitted that the Court may consider granting time to prefer the review petition having regard to the limitation. The applicant is at liberty to file review

proceedings along with the request for condoning the delay. In case the review petition is filed within a week, learned counsel for the respondents submits, that no objection on the ground of delay would be taken. Application stands dismissed as withdrawn."

An application for condonation of delay being CM No.22718/2016 was allowed by this Court on June 2, 2016.

2. The challenge in the writ petition is, to the order passed by the Employees Provident Fund Appellate Tribunal dated November 1, 2010, whereby the Appellate Tribunal has dismissed the appeal filed by the petitioner against order dated June 02, 2008 passed by the Assistant Provident Fund Commissioner under Section 7A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 ("Act of 1952" in short). It is the submission of the learned counsel for the petitioner, the Assistant Provident Fund Commissioner had relied upon the squad report dated June 2, 2008, which report was not given to the petitioner. According to him, the said aspect has not been considered by the Appellate Tribunal. He would state, that there is no such report dated June 2, 2008, in existence. If such report, is in existence, the same has been considered without giving a copy thereof to the petitioner, the conclusion of the Assistant Provident Fund Commissioner in the order dated June 02, 2008 was liable to be set aside. Unfortunately, the same has not been done by the Tribunal.

3. I note, when the writ petition was listed before this Court on March 4, 2015, similar plea was taken by the learned counsel for the petitioner. On such a plea, the learned counsel for the respondent sought time for filing additional documents viz copy of the squad report, which was filed on June 2, 2008 before the Assistant Provident Fund Commissioner, copy of the eligibility register and the balance sheet for the relevant period. Pursuant thereto, the respondent had filed a short affidavit on March 12, 2015 enclosing therewith order sheet dated April 30, 2007 passed in the proceedings under Section 7A; copy of the balance sheet dated March 31, 2008; copy of attendance sheet; copy of the squad report dated April 20, 2006 issued by the office of the EPF. In the short affidavit, in paras 4, 5 and 6, following has been stated:-

"4. That as far as the filing of the Copy of Squad Report is concerned, I hereby state that the Squad Report is of 20.4.2006 and not of 2.6.2008, the same was duly filed on 1.5.2006, a copy of the same had been duly handed over to the establishment on 20.4.2006 itself, which is also duly noted in the Squad Report dated 20.4.2006. Further, the same is also evident from the Order dated 30.4.2007 passed by the Assistant PF Commissioner under the 7A Enquiry Proceedings. A Copy of the Squad Report 20.4.2006 is also attached herewith.

5. That I hereby further wish to clarify before this Hon"ble Court that on 2.6.2008, the Order under Section 7 A of the Employees Provident Funds & Miscellaneous Act, 1952 was passed by the Assistant PF Commissioner and not the Squad Report as has been mentioned in the Order dated 2.6.2008 due to

clerical/typographical error.

6. That in view of the above, I most respectfully submit before this Hon'ble Court that the direction with respect to the submission of the Squad Report filed on 2.6.2008 before the Assistant PF Commissioner be read as Squad Report dated 20.4.2006 and not as submitted on 2.6.2008 as on 2.6.2008 the order under Section 7A of the Employees Provident Funds & Miscellaneous Act, 1952 was passed by the Assistant PF Commissioner in the matter."

4. It is also noted that no response to the said short affidavit has been filed by the petitioner. In the absence of a response, surely it must be construed that the contents of the affidavit have not been denied by the petitioner herein. That apart, I also note, this aspect was argued, during the hearing of the writ petition, as is noted in para 31 of the impugned order dated March 21, 2016. This Court had stated that the squad report is dated April 20, 2006 and not June 02, 2008. It was also noted that copy of the said report along with the list of employees was supplied to the petitioner on April 30, 2007. The same was acknowledged by the representative of the petitioner.

5. Noting the above, this Court was of the view that the said aspect has not been disputed by the petitioner. This Court had also noted in para 32, no supporting documentary evidence was filed by the petitioner to rebut the inspection report, instead of various opportunities granted to the petitioner. If that being the position, the plea now being urged by the learned counsel for the petitioner, has been considered by this Court in the impugned order. It was rightly held that the contents of the short affidavit have not been disputed by the petitioner. The conclusion of this Court in paras 31 and 32 is justified. The plea is liable to be rejected. The plea having been considered and decided cannot be a ground to seek review of the order dated March 21, 2016.

6. The reliance placed by the learned counsel for the petitioner on the judgment of this Court in the case reported as Board of Control for Cricket, India v. Netaji Cricket Club AIR 2005 SC 592 wherein the Court has culled out the following grounds on which a review can be sought, has no applicability in the facts of this case.

(i) Discovery of new and important matter of evidence, which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed;

(ii) Mistake or error apparent on the face of the record and;

(iii) For any other sufficient reason. A perusal of the review petition would reveal that none of the above grounds have been urged in the petition for the Court to review the impugned order.

7. Insofar as the judgment of Nidhi Kaushik v. Union of India & Ors. 212 (2014) DLT 5 (DB) to contend that by filing an affidavit, an order cannot be improved upon is concerned, the short affidavit filed by the respondent was in view of the

plea taken by learned counsel for the petitioner himself on March 4, 2015. It is also noted, no response to the said short affidavit was filed by the petitioner. It is not a case that by way of an affidavit, the respondent has tried to improve its case. Rather, by the affidavit, the respondent has tried to clarify a mistake, which has crept in the order of the Assistant Provident Fund Commissioner dated June 02, 2008.

8. In view of the above, I do not see any merit in the review petition. The same is dismissed.

CM No.22719/2016 Dismissed as infructuous.