

(2015) 01 CAL CK 0066
In the Calcutta High Court
Case No : Writ Petition No. 29134 (W) of 2014

Central Board of Trustees

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Citation : (2015) 2 CALLT 201 : (2015) 146 FLR 467

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Shiv Chandra Prasad, for the Appellant

Final Decision : Dismissed

Judgement

Dr. Sambuddha Chakrabarti, J.

1. Let the affidavit of service filed in Court be kept with the record. The order impugned in the writ petition was passed by the Presiding Officer of the Employees' Provident Fund Appellate Tribunal on July 25, 2012 in ATA No. 590(15) 2012.
2. The said appeal before the Appellate Tribunal was filed under section 71 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 against an order dated May 09, 2012 passed by the Regional Provident Fund Commissioner, Jalpaiguri under section 7A of the said Act.
3. It appears from the order impugned in the writ petition that before the Appellate Tribunal the appellant had admitted the liability of the appellant to pay the provident fund dues but merely prayed for instalments for liquidating the same on account of financial predicaments. Learned Presiding Officer of the Tribunal overruled the objection made by the Provident Fund Authorities as without any basis and allowed the appellant to liquidate the determined amount in 36 instalments payable by the 15th of every calendar month and with other necessary directions.

4. Mr. Shiv Chandra Prasad, the learned advocate for the petitioner, has taken a very serious exception to the grant of instalments as well as for the admission of the appeal by the Appellate Tribunal. According to him, the Tribunal had no jurisdiction to entertain the appeal when the appellant had admitted its dues and therefore, the appellant could not be said to be an aggrieved party.

5. His second limb of submission is that the Tribunal plainly lacked jurisdiction to grant instalments which was the prerogative of the provident fund officials.

6. I have also heard Mr. Arunava Ghosh, the learned advocate for the respondent No. 3 and have given my anxious consideration to the submissions made by the learned advocates for the respective parties. I do not find any merit absolutely in either of the submissions made by Mr. Prasad.

7. A plain reading of section 71 of the said Act makes it clear that any person aggrieved by an order passed under section 7A of the Act may prefer an appeal to the Tribunal against the said order. The submission of Mr. Prasad that the appellant was not aggrieved by the quantification and, therefore, the appeal was not maintainable, overlooks a very basic aspect that grievance of the appellant has not been statutorily limited to the quantification only.

8. It appears from the order of the Provident Fund Authority under section 7A of the Act that the concerned establishment was directed to make payment of the amount determined within ten days from the date of the receipt of the order. The establishment obviously was aggrieved by the latter part of the order. It had fairly submitted before the Tribunal that it had no quarrel with the sum determined. That apart, the submission of Mr. Prasad that the Tribunal should not have admitted the appeal is equally a misconceived one. An appeal under Section 71 is a statutory right which calls for no admission procedure.

9. The next submission of Mr. Prasad with regard to the want of authority to grant instalments for liquidating the dues determined by the Provident Fund Authority must be held to be equally misconceived as the first one. According to Mr. Prasad, a circular has been issued by the Ministry of Labour, Government of India, which empowers the Provident Fund authorities to grant instalments, but the Tribunal has no such power. This is to be considered as an executive discretion which cannot be usurped by a judicial body. Mr. Prasad has very candidly submitted that the establishment should have approached the Provident Fund authorities for the grant of instalments.

10. If that is the point of grievance, the Court finds no substance in it. The stand taken by the respondent is very hard to accept which borders on logical improbability. If such is the submission that the internal circular does not confer any power upon the Tribunal to grant instalments and, therefore, the Tribunal cannot grant it, it must be rejected outright.

11. A bare reading of section 7L of the said Act makes it abundantly clear that a Tribunal may pass such order as it thinks fit, confirming, modifying or annulling

the order appealed against or may refer the case back to the authority with such direction which it thinks fit for a fresh adjudication of the order after taking additional evidence, if necessary. Thus, the power conferred upon the Tribunal is wide enough. It has the power either to reject an appeal by confirming the order of the Provident Fund authorities. It may annul the order or it may modify it.

12. Mr. Prasad submitted that the Tribunal has done nothing of the three and overstepped beyond its statutory jurisdiction.

13. Such a submission on the face of it is clearly unacceptable. The authority has positively modified a part of the order with regard to the mode of payment. Modifying an order must not be interpreted to mean merely the modification of the sum quantified in the order itself. It is an elementary proposition of law that when the statute speaks of an order it also covers any part of it and a party in order to be entitled to file an appeal need not always be aggrieved against every part of that order. The establishment aggrieved by any part of the order has every right to invoke the appellate provision under section 71 of the Act. Thus, I do not find that by passing the order impugned the Tribunal has anyway violated any provision of section 7L of the Act.

14. Mr. Prasad next ventilated his grievance about the order impugned in the writ petition that the terms and conditions for the grant of instalments have not been complied with by the Tribunal.

15. This is a self-defeating and self-contradictory approach. If the Provident Fund authorities genuinely believe that the concerned internal circular has empowered the Provident Fund authorities alone giving them discretionary power and the Tribunal has no such authority to invoke the said circular they cannot simultaneously make a complaint that the terms and conditions of the circular have not been complied with. This argument does not appeal to the logic of any reasonable man. The Provident Fund authorities cannot maintain two stands in the same breath. If the Tribunal has no authority to grant instalments in terms of the said circular, as contended by the writ petitioner, it has no obligation to be bound by its terms and conditions. The writ petitioner cannot take two simultaneous conflicting, contradictory and opposite stands.

16. That apart, the circular referred to by Mr. Prasad clearly stipulated that the grant of instalments has been given to the officers as per the revised delegation of power according to different grades. This has nothing to do with exercising the appellate jurisdiction over the order passed by 7A authority. A Tribunal is not an officer under the Act. The submission of the petitioner must fail on that count also.

17. Mr. Prasad is also not justified in making a grievance that the Provident Fund authorities which had parsed the initial order under section 7A had not been approached by the establishment. Assuming that the establishment could approach the authority that does not really make the Tribunal denuded to its power to grant instalments. The reasons for grant of instalments have been very

specifically recorded by the Tribunal as financial difficulties faced by the establishment.

18. That apart, from a pure logical point of view the stand of the Provident Fund authorities must be held to be seriously misconceived. The question is not who shall grant the instalment. It appears that the authorities are more aggrieved for not approaching them in the first place. This is clearly discernable from the submissions of Mr. Prasad.

19. I fail to understand the stand of the petitioner. What could be done by the 7 A authority, if the establishment had approached him for grant of instalments? They could have either rejected or they could have allowed the prayer. If they could have allowed the instalments, they should have no quarrel for grant of instalment by the Tribunal. If they had rejected, the Tribunal still could have granted the instalments. Whatever the authorities could do, the appellant authority could do the same. The Tribunal does not have to depend on any circular. Section 7L of the Act has given them sufficient powers.

20. Mr. Prasad lastly submitted that the Tribunal does not have the power of a writ court while disposing of an appeal under section 71 of the Act. According to Mr. Prasad, the writ court is meant for doing complete justice between the parties and therefore, competent to pass whichever order it deems necessary. Such a submission also is against fundamental concept of constitution of a court or tribunal inasmuch as jurisprudentially all courts are meant to do complete justice between the parties. An Appellate Tribunal under this Act is neither meant to do incomplete justice between the parties or to make complete injustice between the parties. On the other hand, the powers of the Tribunal are wider than that of the writ court in many respects which will be evident from a bare reading of section 7L of the Act. It may even take additional evidence which is exclusively an exercise of an appellate jurisdiction and a court of appeal under the Code of Civil Procedure has a similar right to take additional evidence and to decide a matter thereon. A writ court does not sit in appeal over an order passed by a statutory authority. Therefore, section 71 provides a more efficacious remedy to an aggrieved party than a writ court.

21. Mr. Ghosh submitted that the filing of this writ petition has been an unethical one. Pursuant to the instalments granted by the Tribunal, the authorities had accepted instalments and after this they cannot challenge the instalments.

22. Mr. Ghosh has submitted that if this Court decides to intervene in the matter the establishment is as of right entitled to refund of the entire instalments with penal interest.

23. Mr. Prasad has no clue to the submission of Mr. Ghosh. I have been informed by the learned advocate of the establishment that almost all the substantial amounts have already been accepted by the Provident Fund authorities. If they had decided to challenge the order it was inequitable on their part to go on accepting the amount by way of instalments paid by the establishment and then

to take an unsustainable technical plea that the Tribunal has no power to grant it. The Court cannot endorse the stand taken by the Provident Fund authorities, particularly regard being had to its statutory character.

24. It appears from the writ petition that the Provident Fund authorities in 2013 itself had filed a writ petition challenging the order impugned in the present writ petition. The writ petition was dismissed by giving them liberty to file a fresh writ petition and pursuant to that this writ petition had been filed. Thus, it is clear that the Provident Fund authorities had taken a decision to challenge the order impugned long before and one wonders how they continued to accept the instalments even thereafter. This is a good example of a bad practice.

25. I find absolutely no merit in the writ petition. On the other hand, I find the conduct of the authorities not a praiseworthy one.

26. The writ petition is thus dismissed. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.