

(2016) 04 MP CK 0014
In the Madhya Pradesh High Court
Case No : WP.No. 1426 of 2016

Devi Ahilya Vishwa Vidhyalaya	Vs	APPELLANT
Assistant Provident Fund Commissioner C-III		RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Employees Provident Fund Appellate Tribunal (Procedure) Act, 1997 — Rule 7(2)

Citation : (2016) 3 CLR 30 : (2016) 149 FLR 1055 : (2016) LabLR 739 : (2016) 3 LLJ 662

Hon'ble Judges : P.K. Jaiswal and Alok Verma, JJ.

Bench : Division Bench

Advocate : Shri Monish Jindal, Advocate, for the Appellant; Shri Gaurav Chhabra, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

P.K. Jaiswal, J.—By this common order, we propose to dispose of all the above noted writ petitions together as the same involve similar points for consideration. For the sake of convenience.

2. The petitioner is praying for setting aside of order dated 4.2.2016 (Annexure P/12) passed in ATA No.28(8)2016 by the Employees Provident Fund Appellate Tribunal, New Delhi whereby, the appeal filed by the appellant under Section 7-I of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred as "the Act"), has been dismissed as barred by time.

3. Brief facts of the case are that the Regional. Provident Fund Commissioner, Indore in pursuance of Central Government Notification of the Ministry of Labour SO No.986 dated 19.2.1981, published on 6.3.1982, applied the Act on the University of Indore now known as Devi Ahilya Vishvavidhyalaya w.e.f. 1.7.1982 bearing Code No. MP/3984. The University disputed the applicability of the Act. The respondent allotted code number to the petitioner institute, Department of University for compliance w.e.f. 4.6.1996. After coverage, enforcement officer of

the respondent approached the institute and asked for payment of provident fund contribution in respect of daily wages workers, failing which they will take coercive action against the institute.

4. On 12.3.2014, a show cause notice was issued directing the petitioner to show cause for levy of damages under Section 14B and under Section 7Q of the Act and a detailed submission was made by the petitioner, but the respondent without considering the submission vide order dated 2.3.2015 directed to pay the amount of damages and interest.

5. The petitioner challenged the said order by filing a Writ Petition No.2384 of 2015 on 9.4.2015, without availing the statutory remedy of the appeal, on the ground that the tribunal was not functioning and the presiding officer has not joined the office. After issuing notice to the respondent, when the matter was listed for hearing, it was pointed out that the tribunal is functioning and, therefore, he was permitted to withdraw the writ petition with liberty to approach the tribunal. Thereafter, the petitioner has filed an appeal under Section 7-I of the Act before the Employees Provident Fund Appellate Tribunal along with an application for condonation of delay. The tribunal by impugned order dated 4.2.2016, dismissed the appeal as barred by time on the ground that as per Rule ? 7(2) of EPFAT (Procedure) Rules 1997 (herein after referred as Rule of 1997), petitioner is supposed to file an appeal within 60 days of the issuance of the impugned order and also within further extended period of 60 days. The appeal was filed after a period of more than three hundred days from passing of the impugned order and hence, it has been dismissed as time barred.

6. Learned counsel for the appellant has submitted that in identical circumstances, by order dated 22.12.2015, which is at page 66, the delay was condoned on the ground that appeal was filed within extended period of Rule ? 7 (2) of Rules of 1997.

7. It is contended by the learned counsel for the petitioner that benefit of exclusion of time under Section 14 of the Limitation Act, 1963 is applicable before the Appellate Tribunal to the petitioner. He submitted that the decisions in the case of Consolidated Engg. Enterprises v. Principal Secy., Irrigation Deptt & Ors. reported as 2008 (7) SCC 169 and Gulbarga University v. Mallikarjun S. Kodagali & Anr., reported as 2008 AIR SCW 6389 are not applicable to the appeals under the Act of 1952. Under Arbitration Act objections under Section 34(3) are filed in civil court while appellate tribunal under the Act or for that matter any authority under E.P.F. Act cannot be termed as civil court or even court in the general sense of the word and petitioner is entitled to the exclusion of the time, which it spent in prosecuting the writ petition before the High Court.

8. In reply, Shri Jain, learned counsel for the respondent has drawn out attention to the Rule 7 of Rules of 1997 and submitted that the time limit prescribed under Rule 7 to challenge the order by filing an appeal before the tribunal was absolute and unextendable by the Court. His contention is that the period for filing the

appeal as per sub Rule 2 of Rule 7 of 1997 is 60 days from the date of order and as per proviso if the tribunal is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days, but not thereafter. He submitted that the law is well settled in the case of Consolidated Engg. Enterprises v. Principal Secy., Irrigation Deptt & Ors. (supra) and submitted that the learned Appellate Tribunal has not committed any legal error in dismissing the appeal and prayed for dismissal of the writ petitions.

9. He has further raised an objection about the noncompliance of 75% of pre-deposit amount. The question of pre-deposit is to be considered by the learned Appellate Tribunal because as per third proviso to Clause 7 (2) of the Rules of 1997, the tribunal may for the reasons to be recorded in writing waive or reduce the amount to be deposited under Section 7Q and thus, we cannot accept the second contention of the learned counsel for the respondent that for non-deposit of pre-deposit the writ petition be dismissed.

10. In respect of question of limitation, it is not in dispute that under Arbitration and Conciliation Act, 1996, the objection under Section 34(3) against the award are filed in civil Court while the appellate tribunal under EPF Act cannot be termed as civil Court and thus, we are of the view that the petitioner is entitled to the exclusion of time, which it spent in prosecuting the Writ Petition No.2384/2015 in the higher Court. On going through the impugned order, we are of the view that the learned Appellate Tribunal has not excluded the time, which the petitioner has spent in prosecuting the writ petition and passed a cryptic order by holding that the appeal is highly time barred.

11. For these reasons, we set aside the impugned order passed by the Tribunal dated 4.2.2016 (Annexure P/12) and the matter is remanded back to the Appellate Tribunal to decide the question of limitation after excluding the period during which the writ petition (s) remained pending. The petitioner is directed to appear before the Appellate Tribunal on 25.4.2016 along with the certified copy of this order, failing which this writ petition (s) deemed to have been dismissed. Interim order (s) to continue till 25.4.2016. On 25.4.2016 the Appellate Tribunal may pass suitable order regarding stay until the decision on condonation of delay application is decided and if the delay is condoned then thereafter till the disposal of the appeal. It is made clear that we have not expressed any opinion on merit of the case.

12. For these reasons, W.P. No.1426/2016, W.P. No. 1427/2016, W.P. No.1450/2016 and W.P. No.1452/2016 are allowed in part and disposed of.

13. A copy of this order be placed in other connected matters.