(2021) 11 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No.6865 Of 2021

M/S Jai Mata Glass Limited — APPELLANT

Vs

Central Board Of Trustees, Employees Provident Fund Organization And Others — RESPONDENT

Date of Decision : 08-11-2021

Acts Referred:
Employees Provident Funds Appellate Tribunal (Procedure) Rules, 1997 — Rule 20
Employees Provident Fund And Miscellaneous Provisions Act, 1952 — Section 7Q, 14B

Citation : (2021) 11 SHI CK 0015

Hon'ble Judges : Mohammad Rafiq, CJ;Sabina, J

Bench : Division Bench

Advocate : Vishal Panwar, Vivek Singh Attri, Abhinav Purohit

Final Decision : Allowed

Judgement

Mohammad Rafiq, CJ

1. This petition has been filed by the petitioner against the order dated 21st January, 2021, passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh, whereby the appeal filed by the petitioner has been dismissed for its non- prosectuion. The learned Tribunal while dismissing the appeal has passed the following order:-

"Heard the learned counsel of the appellant Sh. T.S. Khera as well as learned counsel of the respondent Sh. Sanjay Tangri and perused the file. Perusal of the zimini order dated 03.12.2019 reveals that this appeal is restored by this Tribunal in the interest of justice. Since 10.02.2020 none is turning on behalf of the appellant and learned counsel of the appellant Sh. T.S. Khera has made his presence today. It is contended by the learned counsel of the appellant that appellant is not turning for prosecuting the appeal. It is also informed by the learned counsel of the appellant that appellant has not complied the Court order dated 10.10.2016 with respect to the deposition of Rs.3,000/- as cost for earlier restoration. It emerges from the zimini orders as well as information given by the learned counsel of the appellant that appellant is not interested in contesting the appeal. Hence, in my considered view, appeal is hereby dismissed without entering in merit.

Copy of this order be sent to both the parties either by hand delivery or registered post as required under rule 20 of the Employees Provident Funds Appellate Tribunal (Procedure) Rules, 1997."

2. A perusal of the aforesaid order indicates that the appeal was earlier restored vide order dated 10th October, 2016, subject to deposit of Rs.3,000/- as cost, but the same was not paid and therefore, the appeal was again dismissed.

3. The learned counsel for the petitioner submitted that the petitioner had originally filed the aforesaid appeal before the Employees' Provident Fund Appellate Tribunal, New Delhi against the order dated 23rd October, 2013, passed by the Assistant Provident Fund Commissioner, Shimla, whereby an amount of Rs.32,87,780/- was awarded as damages under Section 14B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and further an amount of Rs.13,79,491/- as interest under Section 7Q of the said Act, thus, raising a total demand of Rs.46,47,271/-. The appeal filed by the petitioner was admitted by the learned Tribunal on 7th April, 2014 and the petitioner-company was directed to deposit Rs.11,15,000/- and subject to deposit of said amount, respondents No.1 and 2 were restrained from taking any coercive action till the disposal of the appeal. However, the appeal was dismissed in default for non-appearance of the counsel on 8th July, 2016. The petitioner-company filed an application for restoration and the appeal was ordered to be restored vide order dated 10th October, 2016, subject to payment of cost of Rs.3,000/-. Subsequently, the appeal was transferred to the Central Government Industrial Tribunal-II Chandigarh, where the petitioner-company engaged another counsel and handed over the papers to him. It is further submitted that since the petitioner's counsel did not appear before the learned Tribunal, the appeal was again dismissed for non-appearance on 20th September, 2019. The petitioner again moved an application for restoration of the appeal and the same was restored vide order dated 3rd December, 2019. It is submitted that now once again the appeal has been dismissed on 21st January, 2021, on the counsel for the petitioner -appellant pleading no instructions that the petitioner-appellant was not interested in contesting the appeal. It is further submitted that the petitioner-appellant had duly engaged its counsel and instructed him to contest the appeal on merits. The learned counsel, therefore, was not entitled to plead no instructions and therefore, the learned Tribunal, on that basis, was not justified in recording that the petitioner-appellant was not interested in contesting the appeal.

4. As far as the amount of cost of Rs.3,000/-, which was required to the deposited, pursuant to the order dated 10th October, 2016, is concerned, the petitioner-appellant has duly paid the said amount to the learned counsel who at that time was appearing for it before the Employees' Provident Fund Appellate

Tribunal, New Delhi. Hence, the petitioner-appellant should not be made to suffer for the lapse on the part of the learned counsel. The petitioner-appellant is willing to contest the appeal on merits and is also ready to pay the cost even if now imposed by this Court. The learned counsel for the petitioner further submitted that presently the petitioner-company is under liquidation and therefore, cannot afford to pay the huge amount demanded by the respondents.

5. Having regard to the submissions made and particularly taking into consideration the fact that the appeal was originally filed before Employees' Provident Fund Appellate Tribunal, New Delhi and subsequently transferred to Central Government Industrial Tribunal-cum-Labuor Court -II, Chandigarh, where the appellant-petitioner's counsel pleaded no instructions and on that basis the learned Tribunal has drawn an inference that the appellant-petitioner was not interested in contesting the appeal. In our view the matter deserves to be decided on merits, rather than being dismissed for the reason that the appellant-petitioner is not willing to contest the appeal on merits, particularly when the appellant-petitioner is very much interested in contesting the appeal on merits. Accordingly, the writ petition is allowed and the impugned order dated 21st January, 2021, passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh is set aside, subject to payment of cost of Rs.25,000/- by the petitioner, which shall be deposited with the H.P. State Legal Services Authority within a period of ten days from today with a further direction to the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh to decide the appeal within four months from the date of production of a copy of this order alongwith receipt of payment of costs.

6. Pending application(s), if any, shall also stand disposed of.

