
(2012) 02 BOM CK 0136
In the Bombay High Court
Case No : Writ Petition No. 796 of 2011

M/s. Jay Security Services

APPELLANT

Vs

The Regional Provident Fund Commissioner-II

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 4 ALLMR 303

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : G. Sardesai, for the Appellant; P.P. Singh, for the Respondent

Judgement

F.M. Reis, J.—Heard Shri G Sardesai, learned Counsel appearing for the petitioner and Shri P. P. Singh, learned Counsel appearing for the respondent. Rule. Heard forthwith by consent of learned Counsel.

2. Shri P. P. Singh, learned Counsel appearing for the respondent waives service.

3. The above petition challenges the order passed by the Employees' Provident Fund Appellate Tribunal, New Delhi, in Case No. ATA No. 155(20)2009 dated 24.08.2011 whereby an appeal preferred by the petitioner challenging the order dated 28.01.2009 came to be dismissed.

4. During the course of the hearing of the above petition, Shri Sardesai, learned Counsel appearing for the petitioner apart from advancing arguments on merits contended that the authorities below have not assessed the damages in accordance with the provisions of the Act, nevertheless, pointed out that there was breach of principles of natural justice as according to him, the petitioner was not heard at the time of the disposal of the appeal preferred by the petitioner. The learned Counsel has also raised the grievance with regard to the period from which the amount has been directed to be paid by the petitioner. The learned Counsel has taken me through the impugned order and pointed out that the Appellate authority has not given any reason as to why the appeal came to be

rejected as according to him, there was a statutory duty cast on the Appellate authority to give reason whilst disposing of the appeal preferred by the petitioner. The learned Counsel as such submitted that the impugned order deserves to be quashed and set aside.

5. On the other hand, Shri P. P. Singh, learned Counsel appearing for the respondent has supported the impugned order. The learned Counsel has pointed out that the petitioner has not appeared before the Appellate authority at the time of the hearing of the appeal and consequently there is no question of exercising any discretion in favour of the petitioner at this stage. The learned Counsel has further pointed out that the damages have been assessed in accordance with the Rule 32(A) of the relevant Rules and as such, it is not correct to contend that the authorities have not complied with the provisions of law. The learned Counsel further pointed out that considering the facts and circumstances of the case, there is no case made out by the petitioner which calls for any interference by this Court under Article 227 of the Constitution of India.

6. Having heard the learned Counsel and on perusal of the impugned order, I find that Shri Sardesai, may be justified to contend that there are no reasons given by the Appellate authority whilst passing the impugned order. But however, taking note of the conduct of the petitioner for not appearing before the Appellate authority when the matter was heard on merits, I find it appropriate in the interest of justice that the petitioner be allowed to be heard in their appeal subject to payment of costs of Rs. 20,000/- to the respondent. All the rival contentions on merits with regard to the claim put forward by the respondent are left open. Considering the nature of the dispute, the Appellate authority shall try and dispose of the appeal as expeditiously as possible.

7. In view of the above, I pass the following: ORDER

(i) The petition is partly allowed.

(ii) The impugned order dated 24.08.2011 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi, is quashed and set aside.

(iii) The Tribunal is directed to decide the appeal preferred by the petitioner afresh on payment of the said costs as condition precedent after hearing the parties in accordance with law.

(iv) All the contentions raised by the parties are left open.

(v) The petitioner shall pay the costs of Rs. 20,000/- to the respondent within a period of one month.

(vi) Rule is disposed of in above terms.

The petition stands disposed of accordingly with no order as to costs.