(2020) 07 MP CK 0138

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 611 Of 2020

M/S Sumedha Vehicles Pvt. Ltd. APPELLANT

Vs

Central Government Industrial Tribunal (CGIT) RESPONDENT

Date of Decision : 14-07-2020

Acts Referred:

Madhy Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(i)
Employees Provident Fund And Miscellaneous Provisions Act, 1952 — Section 3, 7A(1)(b),7B, 7C, 7I, 7I(3), 7I(4), 7Q, 14B

Citation : (2020) 07 MP CK 0138

Hon'ble Judges : Sheel Nagu, J;Rajeev Kumar Shrivastava, J

Bench : Division Bench

Advocate : D. K. Agarwal, Raj Kumar Goyal

Final Decision : Dismissed

Judgement

This case is heard through video conferencing.

The present intra court appeal filed u/S.2(i) of M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam,2005 assails the final order passed

by the learned Single Judge in WP 28789/2018 on 13.01.2020 dismissing the petition in question by which challenge was made to the interlocutory

order of the Central Government Industrial Tribunal and Labour Court Lucknow in Appeal No.53/19, accepting the appeal preferred by the appellant

against an order passed u/S.14-B of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (â??1952 Actâ? for brevIety) but declining to

entertain the challenge in respect of order passed u/S. 7-Q of 1952 Act by assigning the reason that in the absence of any enabling provision under the

1952 Act, an appeal against order u/S. 7-Q imposing interest on the petitioner establishment cannot be entertained.

Learned Single Judge has dismissed the petition by upholding the interlocutory order of the Tribunal by holding that the only provision for appeal u/S.7-

I of 1952 Act does not provide for an appeal against an order passed u/S. 7-Q of 1952 Act.

Learned counsel for the appellant by reffering to various paras in the volumnous writ appeal which runs in more than 300 pages submits that Section

7-A(1)(b) of 1952 Act empowers certain authorities to determine money due from the employer under the provisions of 1952 Act and Schemes

framed thereafter. By referring to the said provision learned counsel Shri Agarwal lays emphasis on the expression â??........determine the amount

due from any employer under any provision of this Act..........â? submits that legislature by using the said expression â??........under any provision of

this Act........â? intends to convey the meaning that an order passed u/S.7-A is a composite order includes within it's sweep an order u/S.7-Q relating

to interest for delayed payment of principal amount.

In support of aforesaid challenge raised by the petitioner, attention of this Court is also invited to one of the few last lines of Para 47 of the impugned

order of the learned Single Judge which are reproduced below for ready reference and convenience:-

â??.........However the petitioner has not challenged the correctness of the order dated 20.12.2019 passed by CGIT-cum-Labour Court Lucknow on

merits..........â??

Appellant by referring to the above sentence in Para 47 urges that learned Single Judge misdirected itself by harbouring the misconception that

interlocutory order of CGIT dated 20.12.2019 was not challenged on merits.

Reliance is placed for this purpose by learned counsel for the appellant on Sumedico Corporation Vs. R.P.F. Commmissioner reported in 1998 (8)

SCC 381.

Per contra, learned counsel for EPF Organization Shri Goyal submits that the order of learned Single Judge is in line with statutory scheme of 1952

Act and the remedy of appeal being a creature of statute cannot be made available in the absence of enabling provision. Thus a prayer is made for

dismissal of this appeal in limine.

At the very outset this Court may observe that basic/foundational order u/S.7(A) has not been assailed by the appellant in any higher forum. The challenge made before CGIT was limited to the order u/S.14-B and the consequential order u/S.7-Q levying interest on delayed payment of the

determined sum.

Taking up the last ground first as regards anomaly pointed out in Para 47 of the impugned judgment of learned Single Judge, it is seen from the record

that if the contents of Paragraph 47 are textually and contextually read as a whole, the tenor revealed is that the learned Single Judge while finding

that appellant has not challenged the correctness of the order of CGIT on merits, meant that the order u/S. 7-Q of imposing interest on the delayed

payment of determined sum was not challenged before this Court on merits but only on the jurisdictional ground. This meaning is clearly conveyed if

the entire Paragraph 47 is read in juxtaposition of the other paragraphs of the impugned order of learned Sigle Judge.

It is settled principle of law that remedy of appeal is not inherent but can be availed and invoked only if the same is statutorily provided. (Please see:

Durga Shankar Mehta Vs. Thakur Raghuraj Singh & ors. AIR 1954 SC 52, 0Ganga Bai Vs. Vijay Kumar & Ors. 1974 (2) SCC 39 3and Hindustan

Petroleum Corporation Ltd. Vs. Dilbahar Singh 2014 (9) SCC 78).

Section 7-I of 1952 Act which provides for appeal to the Tribunal, provides in exhaustive term, the order order passed under particular provisions of

1952 Act to be appealable. The corollary to this is that any order passed under any provision 1952 Act which are not mentioned in Section 7-I no

appeal against such order would be maintainable. In other words Section 7-I is exhaustive in nature and cannot be expended to include provision not

mentioned therein since any such exercise would violate fundamental principle of interpretation of statute, that if the words used in the statute are

clear, distinct and unambiguous, then the requirement to invoke other principles of interpretation stand obviated. In the instant case, Section 7-I in

specific terms provides for appeal against notification/order passed under the following provisions of 1952 Act :-

(i) Proviso to sub-section (3) of Section 1.

(ii) Sub-section (4) of Section 1

(iii) Section 3

(iv) Sub Section (1) of Section 7-A

(v) Section 7-B

(vi) Section 7-C, &

(vii) Section 14-B

From the above it is graphically clear that Section 7-I being exhaustive in nature does not provide for an appeal against an order passed imposing

interest on an employer u/S. 7-Q for delayed payment on principal determined sum.

In the conspectus of above discussion, we see no ground to interfere with the well reasoned order of the learned Single Judge which is accordingly

upheld.

Consequently, WA stands dismissed in limine at the admission stage.

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