

(2014) 07 CAL CK 0094

In the Calcutta High Court

Case No : A.S.T. 273 of 2014 and A.S.T.A. 212 of 2014

Regional Provident Fund Commissioner

APPELLANT

Vs

Employees Provident Funds Appellate Tribunal

RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7A, 7I

Foreign Exchange Regulation Act, 1973 — Section 54

Citation : (2014) 4 CHN 99 : (2014) 143 FLR 840 : (2014) LabIC 4033 : (2014) 4 LLJ 85 : (2015) 1 LLN 119 : (2014) LLR 1242 : (2015) 2 WBLR 575

Hon'ble Judges : S. Chatterjee, J;P.K. Chattopadhyay, J

Bench : Division Bench

Advocate : L.K. Chatterjee and Aparna Banerjee, Advocate for the Appellant; Suddhasatva Banerjee, Amritam Mandal and Cedric Fernandez, Advocate for the Respondent

Judgement

1. The appellant-petitioner herein filed the writ petition challenging the order passed by the Employees Provident Fund Appellate Tribunal in ATA No. 341 (15) 2008 whereby the said Appellate Tribunal was pleased to set aside the order passed by the said appellant-petitioner. The learned Single Judge held that the appellant-petitioner herein being the quasi-judicial authority cannot file the writ petition challenging the order passed by the learned Appellate Tribunal.

2. Mr. L.K. Chatterjee, learned Advocate representing the appellant-petitioner submits that the said appellant-petitioner is entitled to challenge the order passed by the Appellate authority being a statutory authority. Mr. Chatterjee further submits that the learned Single Judge erroneously held that the writ petition is not maintainable at the instance of the appellant-petitioner ignoring the fact that the said appellant-petitioner passed an order under the Statute which was not properly decided by the learned Appellate Tribunal.

3. Mr. Chatterjee also referred to and relied upon the following decisions in

support of his aforesaid contentions:

"1. Assistant Regional Provident Fund Commissioner Vs. Employees Provident Fund Appellate Tribunal and Others,

2. Regional Provident Fund Commissioner v. Anithing Studios Pvt. Ltd. (Writ Appeal No. 786/2012)

(Unreported judgment of the Hon"ble High Court of Karnataka at Bangalore)"

4. In the aforesaid decisions, right of the quasi-judicial authority to challenge the decision of the Appellate authority was not decided and therefore, the aforesaid decisions cited by Mr. Chatterjee, learned Advocate of the appellant-petitioner, have no manner of application in the facts of the present case.

5. The learned Advocate representing the respondent No. 2, however, submits that the appellant-Regional Provident Fund Commissioner, exercising quasi-judicial powers passed order under Section 7A of the EPF Act, 1952 in the present case and the said order was upset by the learned Appellate Tribunal. The learned Advocate representing the respondent No. 2 further submits that the Regional Provident Fund Commissioner cannot file any writ petition challenging the order of the learned Appellate Tribunal since the said Regional Provident Fund Commissioner exercised quasi-judicial power while passing an order under Section 7A of the EPF Act, 1952.

6. The learned Advocate representing the respondent No. 2 referred to and relied on the following decisions in support of his aforesaid contentions:

"1. Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, Kerala v. West Coast Petroleum Agency, rep. by its Managing Partner, Kerala and Others 2012 III LLJ 63 (Ker)

2. Assistant Provident Fund Commissioner, Visakhapatnam Vs. Employees Provident Fund Appellate Tribunal and Another,

3. Asstt. Provident Fund Commissioner Vs. Nirmitee Holidays (P) Ltd., : Asstt. Provident Fund Commissioner Vs. Nirmitee Holidays (P) Ltd., "

7. In the aforesaid decisions, it has been specifically held that the authority exercising quasi-judicial power under Section 7A of the EPF Act could not challenge the order passed by the Appellate authority. In the present case, the appellant-petitioner herein exercised quasi-judicial powers and passed orders under Section 7A of the EPF Act, 1952. The said appellant-petitioner cannot be an aggrieved party to the dispute.

8. In the case of Assistant Provident Fund Commissioner, Visakhapatnam v. Employees Provident Fund Appellate Tribunal and Another (supra), Hon"ble Andhra Pradesh High Court specifically held:

"8. The question is whether the petitioner can be said to be an aggrieved person entitled to challenge the order passed by the first respondent. In my opinion, a

person can said to be aggrieved, if his interests are adversely affected by adjudication and the said adjudication has deprived him of something to which he had a right. The Assistant Provident Fund Commissioner, Visakhapatnam, who is the petitioner herein, is a quasi-judicial authority entitled to exercise the powers conferred under Section 7A of the Act by following principles of natural justice. He has no role to step into the shoes of the party to a dispute. He is not a party to the lis. All his decisions are subject to the appeals provided under the statute. In *Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate and Another*, , the Supreme Court of India while considering the provisions of Section 54 of the Foreign Exchange Regulation Act, 1973 held as under: "An adjudicating authority exercises a quasi-judicial power and discharges judicial functions. When its order had been set aside by the Board, ordinarily in Absence of any power to prefer an appeal, it could not do so. The reasonings of the High Court that he had general power, in our opinion, is fallacious. For the purpose of exercising the functions of the Central Government, the officer concerned must be specifically authorized. Only when an officer is so specifically authorized, he can act on behalf of the Central Government and not otherwise. Only because an officer has been appointed for the purpose of acting in terms of the provisions of the Act, the same would not by itself entitle an officer to discharge all or any of the functions of the Central Government. Even ordinarily a quasi-judicial authority cannot prefer an appeal being aggrieved by and dissatisfied with the judgment of the appellate authority whereby and whereunder its judgment has been set aside. An adjudicating authority, although an officer of the Central Government, should act as an impartial Tribunal. An adjudicating authority, therefore, in absence of any power conferred upon it in this behalf by the Central Government, could not prefer any appeal against the order passed by the Appellate Board."

9. The Hon'ble Bombay High Court in the case of *Asstt. Provident Fund Commissioner, Goa v. Nirmitee Holidays (P) Ltd., Pune* (supra) held:

"4. Bare perusal of the provisions of the Act and particularly Section 7-A and Section 7-I of the Act discloses that while discharging jurisdiction under Section 7-A of the Act, the petitioner was discharging quasi-judicial functions and the said order was challenged by the respondent in an appeal filed under Section 7-I of the Act and the Appellate Authority by discharging quasi-judicial functions has allowed the appeal preferred by the respondent. Once it is clear that the petitioner was exercising quasi-judicial functions while passing the order which has been set aside by the Appellate Authority, in my considered opinion, it would not be permissible for the petitioner to challenge the order passed by the Appellate Authority reversing his order. Permitting such an exercise would be subversive of judicial discipline. It is well-settled that an authority while discharging quasi-judicial functions cannot challenge the order passed by the Appellate Authority, reversing his/her order....."

10. In the present case, the appellant-petitioner herein while discharging

authority and jurisdiction under Section 7A of the Act passed an order in exercise of his quasi-judicial power and the said order was challenged before the learned Appellate Tribunal. The said learned Tribunal was pleased to set aside the order passed by the said appellant-petitioner. The appellant-petitioner thereafter, challenged the order passed by the learned Appellate Tribunal by filing the writ petition.

11. The order passed by the Appellate authority reversing the order passed by the quasi-judicial authority cannot be challenged by the said quasi-judicial authority by filing a writ petition. The appellant-petitioner herein cannot be said to be an aggrieved party since the interests of the said appellant-petitioner could not be affected by the order passed by the learned Appellate Tribunal. The appellant-petitioner herein is not a party to the lis and the decisions of the said authority are subject to the order passed by the Appellate authority under the provisions of the Statute.

12. For the aforementioned reasons and following the decisions of the different High Courts as mentioned hereinbefore, we are of the opinion that the appellant-petitioner herein has no right to initiate any proceeding challenging the order of the learned Appellate Tribunal.

13. The learned Single Judge, in our opinion, has rightly dismissed the writ petition on the ground of maintainability. We do not find any error and/or infirmity in the decisions of the learned Single Judge.

14. Therefore, we affirm the decisions of the learned Single Judge and dismiss both the application as well as the appeal upon treating the said appeal as on day's list.

15. In the facts of the present case, there will be no order as to costs. Let urgent xerox certified copy of this order, if applied for, be given to the learned Advocate of the parties on usual undertaking.