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(2013) 12 AHC CK 0028

In the Allahabad High Court

Case No : W.P. No. 10982/2013

Sahara India and Others APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 19-12-2013

Acts Referred:

Citation : (2014) LLR 274

Hon'ble Judges : Devi Prasad Singh, J;Ashok Pal Singh, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Devi Prasad Singh and Ashok Pal Singh, JJ.—Heard Sri J.N. Mathur, learned Senior Counsel assisted by Sri Piyush Kumar Agarwal on behalf of petitioners, learned counsel for opposite parties and perused the record. With the consent of parties'' counsel, the writ petition is being decided at the admission stage.

2. A preliminary objection has been raised by learned counsel for the respondents that against the impugned order dated 31.10.2013 as contained Annexure-1 to the writ petition, statutory appeal lies before the Tribunal u/s 7I of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. However, Sri J.N. Mathur, learned counsel for the petitioners refuted the argument of learned counsel for the respondents and submits that appeal is not maintainable, hence, the writ petitions may be entertained by this court. For convenience, section 7I of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, is reproduced as under:

7-I Appeals to Tribunal--(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

3. A plain reading of the aforesaid provisions reveals that any person aggrieved by notification of the Central Government or any authorities under the provision of sub-section (3) or sub-section (4) of section 1 of section 7A or section 7B etc. may prefer an appeal before the Tribunal.

4. Legislature to their wisdom has used the word "or" which seems to be conjunctive in nature deals with different matters which may constitute the ground for an appeal. Accordingly, order passed by Central Government or order passed by any authority under the provision of sub-section (3) may be appealable. These reasons seem to be fortified by the rule 7 sub-section 2 of Rules, which is reproduced as under:

7 Modification of Scheme (1) The Central Government may, by notification in the Official Gazette, add to [amend or vary, either prospectively or retrospectively, the Scheme, the [Pension] Scheme or the Insurance Scheme, as the case may be].

(2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity or anything previously done under that notification.

5. A plain reading of Sub-section (2) of Section 7 (Supra) reveals that any person aggrieved by an order passed by Central Government or any other authority under the Act may within sixty days from the date of issuance of notification or order prefer an appeal before the Tribunal. Provision contained under Sub-Section (2) Rule 7 makes it clear that an order passed by Central Government or the order passed by authority shall be appealable to the tribunal. The intention seems to be clear and the principle of casus omissus may not be applied.

6. Accordingly, we are of the view that against the impugned order dated 31.10.2013, statutory appeal may be filed before the tribunal.

7. We give liberty to the petitioners to prefer an appeal within one month. In case such appeal is preferred, the tribunal shall entertain and decide the same on merits expeditiously say within a period of four months from the date of institution of the appeal. It is further provided that the tribunal shall decide

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application for stay filed alongwith the appeal within six weeks from the date of institution of appeal. For the period of two months or till the tribunal decides the stay application, whichever is earlier, the impugned order shall remain suspended and the petitioners shall not withdraw the amount of provident fund of its employees except for the payment of provisional dues of the employees.

The writ petition is disposed of accordingly.

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