

(2015) 04 DEL CK 0001
In the Delhi High Court
Case No : Writ Petition (C) 3323/2015

Tops Detective and Security Services Ltd.	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7(I), 7-A, 7-B

Citation : (2015) 04 DEL CK 0001

Hon'ble Judges : Deepa Sharma, J.

Bench : Single Bench

Advocate : Rajiv Shukla and Shubham Saxena, for the Appellant; Rajesh Kumar, SC, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Deepa Sharma, J.

CM No. 5948/2015 (Exemption)

Exemption allowed, subject to just exception.

The application stands disposed of.

W.P.(C) 3323/2015 and CM No. 5947/2015 (for stay)

1. Issue notice.

2. Mr. Rajesh Kumar, Standing Counsel accepts notice on behalf of respondent No. 1 and Mr. Arvind Kumar Verma, Advocate accepts notice on behalf of the respondent Nos. 2 and 3.

3. The petitioner in the present petition has submitted that the proceedings under Section 7-A and 7-B of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) were initiated by the respondent No. 3 against the petitioner.

4. The Regional Provident Fund Commissioner passed the orders under Section 7-A and 7-B of the Act against the petitioner. On 30.03.2015, the petitioner preferred the statutory appeal under Section 7(I) of the Act against the said orders dated 28.01.2015 and 19.03.2015.

5. It is further submitted on behalf of the petitioner that the EPF Appellate Tribunal is a National Appellate Tribunal and there is only one Appellate Tribunal in the entire Nation. Since respondent No. 1 has failed to appoint the Presiding Officer of the statutory Appellate Tribunal, a writ petition bearing WP(C) No. 8429/2014 was filed by the Bar Association of the Tribunal before this Court which was disposed of on 18.02.2015 by Hon"ble the Chief Justice. Pursuant to the order of the Chief Justice dated 18.02.2015, the Presiding Officer of the Appellate Tribunal has although been appointed, but he has not resumed his duties so far as a result the Appellate Tribunal is non-functional and the statutory Appeals are not being heard by Appellate Tribunal.

6. It is submitted that there is every apprehension to the petitioner that respondent Nos. 2 and 3 may initiate coercive actions for recovery of the amounts assessed by the Regional Provident Fund Commissioner.

7. It is submitted that the act of respondent No. 1, by not appointing the Presiding Officer of the only Appellate Tribunal, amounts to denial of lawful legal rights of statutory Appeal to the petitioner and it is prayed that the respondent Nos. 2 and 3 be restrained from taking any coercive measure against the petitioner in pursuance to the impugned order till the pendency of the statutory appeal bearing ATA No. 353(09)2015 filed before the statutory Appellate Tribunal.

8. It is also submitted that on earlier occasions also, the same situation had arisen and in the case of Arihant Threads Ltd. Vs. Union of India, W.P.(C) No. 3331/2000, a Division Bench of Punjab and Haryana High Court had passed an order directing all the authorities to maintain status quo in such matters where the Chair of the Appellate Tribunal is lying bare and vacant. The relevant portion of the judgment is reproduced hereunder:-

".... if such appeals are filed and proof thereof is shown to the Recovery Officer, then said officer would not affect recovery of the demand issued under Section 7-A of the Act till decision of the stay application."

"In comity to the different orders passed by various Benches of this Court and to avoid unnecessary prejudice to the Petitioner resulting from inaction on the part of the Union for such a considerable period, it is in the interest of justice to restrain the Respondents from taking any coercive steps to recover the amount which is the subject matter of these writ petitions."

9. It is also contended that the ratio of the said order has been followed by this court in the matter of Elbee Services Vs. Union of India, WP(C) No. 10369/2004.

10. It is not disputed on behalf of respondent no .1 that the Presiding Officer has not resumed his duties till date. This fact is also not disputed on behalf of the

respondent nos. 2 and 3. It is also admitted that the petitioner has filed the statutory appeal and it could not be heard due to nonfunctioning of the Appellate Tribunal.

11. In view of Section 7(I) of Employee's Provident Fund and Miscellaneous Provision Act, 1952, it is a statutory right of the petitioner to file an Appeal before the Tribunal.

12. Unfortunately, his appeal could not be heard since the Appellate Tribunal is not functioning, so the statutory right of the petitioner needs to be protected.

13. As brought to my notice by the petitioner, in the earlier petitions mentioned above, the right of the petitioners in those petitions, which were on the same facts and circumstances, had been protected.

14. In view of the ratio of the above-mentioned judgments, I hereby direct the respondent nos. 2 and 3 not to take any coercive measure pursuant to the impugned orders till statutory appeal is being heard by the Tribunal.

15. However, nothing in this order shall tantamount to expression of opinion on the merit of case of parties before Appellate Tribunal.

With this direction, the present petition stands disposed of.

CM No. 5947/2015 also stands disposed of.