
(2016) 02 KL CK 0128
In the High Court Of Kerala
Case No : W.P.(C) No. 28564 of 2011 (U).

Victory Paper and Boards (India) Ltd.

APPELLANT

Vs

Assistant Provident Fund Commissioner Employees Provident
Fund Organization Bhavishyanidhi Bhavan and another.

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Citation : (2016) 2 CLR 535 : (2016) 150 FLR 492 : (2016) LabLR 822 : (2016) 2 LLJ 588

Hon'ble Judges : K. Harilal, J.

Bench : Single Bench

Advocate : M.P. Ashok Kumar and M.R. Dhanil, Advocates, for the Appellant

Final Decision : Disposed Off

Judgement

K. Harilal, J. - The petitioner is a company manufacturing in paper and paper products. According to the petitioner company all regular employees of the company are covered by the Employees Provident Fund Scheme and the company is not liable to pay contribution with regard to the workers engaged by the contractor. According to the contention of the petitioner, first respondent passed Ext.P2 order determining a sum of Rs. 15,78,833/- in respect of the contract employees under Section 7A of the Employees Provident Fund Act. Challenging Ext.P2 order passed by the first respondent, the petitioner filed Ext.P3 appeal before the second respondent. Thereupon, the appellate authority stayed the operation of Ext.P2 subject to the deposit of 40% of the assessed amount and the same is evidenced by Ext.P4. The petitioner complied the conditions specified in the stay order and deposited a sum of Rs. 6,31,598/- before the Assistant Provident Fund Commissioner, Calicut.

2. The grievance of the petitioner is that even without notifying the posting date to the lawyer appearing for the petitioner, the second respondent passed Ext.P6 ex parte order rejecting the appeal filed by the petitioner. Thus an opportunity of being heard was not given to the petitioner before passing Ext.P6 order, by the

appellate authority under the Employees Provident Fund and Miscellaneous Provisions Act. It is with this background, this writ petition is filed with a prayer to quash Ext.P6 order and direct the second respondent to consider the appeal afresh and pass orders accordingly.

3. Heard the learned counsel for the petitioner and the learned standing counsel for the respondents 1 and 2.

4. Though this writ petition is filed on various grounds, challenging the findings of the second respondent in Ext.P6, the crux of the argument is that Ext.P6 order was passed without affording an opportunity of being heard to the petitioner. According to the petitioner, the petitioner had been vigilantly prosecuting the appeal and he failed to appear before the second respondent only on the reason that the posting date was not brought to the notice of the petitioner or his counsel appearing for him in the appeal. It is also submitted that there was no wilful negligence or default from the part of the petitioner or his counsel in not appearing before the Tribunal at the time when the appeal was taken for hearing.

5. To substantiate the bonafides of the above submission, the learned counsel drew my attention to Ext.P4 interim order, staying the operation of the order under challenge and the due compliance with the conditions imposed by the second respondent in Ext.P4 order. The learned counsel prayed for an opportunity of being heard before the second respondent.

6. Per contra, the standing counsel for the respondents 1 and 2 advanced arguments to justify the passing of Ext.P6 order on merit, in the absence of petitioner and his counsel before the second respondent. According to the learned standing counsel for the respondents, the petitioner failed to appear before the second respondent, when the appeal was taken for hearing and in that circumstance, the second respondent is justified in considering the appeal on merits, on the basis of the materials available on record and passing the order accordingly.

7. Going by Ext.P6 order passed in appeal by the second respondent, it is not disputed that Ext.P6 order was an ex parte order passed in the absence of petitioner and his counsel. As rightly submitted by the learned counsel for the petitioner, going by Ext.P4 and P5, it can be reasonably inferred that the petitioner was vigilantly prosecuting the appeal. Ext.P5 shows that in compliance with the conditions imposed in Ext.P4 stay order, the petitioner had deposited this Rs. 6,31,598/- within time specified in Ext.P4 order. At this juncture, it is to be remembered that the petitioner is conducting the manufacturing unit at Kunnamkulam in Kerala and the seat of Tribunal is at Delhi. In disputably, aggrieved by Ext.P3 order, the petitioner engaged a lawyer at Delhi and filed an appeal and obtained an interim order by depositing a substantial amount and the same shows the bonafides of the petitioner to contest the matter on merit. This court is of the opinion that even if there is any kind of laches or negligence on the part of the lawyer who appeared for and on behalf of the petitioner before

the Tribunal, the petitioner cannot be made to suffer. When substantial justice and technical considerations are pitted against each other, the substantial justice deserves to be preferred rather than technical considerations.

8. In the above view of the matter, this court is inclined to grant one more opportunity to the petitioner to contest the appeal on merit on condition. Consequently, Ext.P6 will stand set aside on payment of Rs. 5000/- to the 1st respondent as cost within a period of one month from the date of receipt of the copy of this judgment and on that event, the second respondent will consider the appeal afresh and dispose the same on merit. Needless to say, in case the petitioner fails to comply the condition, Ext.P6 will stand in force as such.