

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
DELHI; ROOM NO 208, ROUSE AVENUE DISTRICT COURT
COMPLEX, NEW DELHI-110002.**

APPEAL NO. D-2/16/2021

M/s. Satish Kumar Sharma

Appellant

Through:- Shri S.K. Khanna, Ld. Counsel for the Appellant.

Vs.

RPFC Gurgaon West

Respondent

Through:- Shri B.B. Pradhan, Ld. Counsel for the Respondent

Order dated 13-August-2021

This order deals with the admission of the appeal and a separate petition filed by the appellant praying waiver of the condition prescribed u/s 7 O of the Act directing deposit of 75% of the assessed amount as a pre condition for filing the appeal, for the reasons stated in the petitions.

Copy of the petitions being served on the respondent, learned counsel for the respondent appeared and participated in the hearing held through video conferencing on 4/8/21, though no written objection was filed by the respondent. The record reveals that the impugned order u/s 7A was passed by the commissioner on 25/1/21 and served on the appellant on 8/2/21. The appellant preferred a review invoking the provisions of sec 7B of the Act. But the same was rejected by order dt 19/4/21. Hence the appeal filed on 15/7/21 is within the prescribed period of limitation.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 7 -O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed taking into consideration the performance based incentives and overtime remuneration paid to the employees on performance output. Basic salary of all the employees has been correctly shown in the salary register and appropriate amount has been contributed to the EPF & MP Fund. Being called by the commissioner all the documents were made available and the establishment had extended all necessary co-operation. But the

commissioner without going through the details of the said records passed the order, which is based upon the report of the E O only. Citing various judgments of the Hon'ble S C including the judgments rendered in the case of **Bridge & Roof Co (India) Ltd vs UOI and Manipal Academy of Higher Education vs PF Commissioner** he submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success as the commissioner failed to appreciate the principle of universality. He also submitted that the commissioner while discharging a quasi judicial function had manifestly failed to deal the legal submissions of the appellant establishment. He also submitted that the performance based incentive and overtime remuneration paid not being contractually agreed, falls out side the definition of basic wage defined u/s 2 (b) of the EPF & MP Act. All these aspects if would be considered ,the appellant has a fair chance of success. Thus insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant during this difficult time when the business in all sectors is encountering huge loss. The other argument advanced by him is that the commissioner did not follow the principles of natural justice in refusing the time prayed during the inquiry on account of the pre matured death of the brother of the appellant. The commissioner had initiated the inquiry pursuant to the judgment passed by the Hon'ble SC in the case of Vivekananda VidyaMandir, though the EPFO had issued a clear guideline not make inquiry in respect of the old period and not against the establishments which is not defaulter. In this case the period for inquiry covers from 4/13 to 5/18 and pursuant to a notice inquiry was initiated in August 2019, when the country was battling against the pandemic COVID-19. Much prior to the inquiry the EPF contribution of the employees was deposited. Hence the establishment was not a defaulter to be dealt as per the observation in the case of Vivekananda VidyaMandira. He there by prayed for waiver of the condition of pre deposit on the ground that the Tribunal has the discretion to do so in the facts and

circumstances of this case. He also submitted that at the end of the hearing of the appeal, if the amount assessed is found payable it will be paid as the appellant having an established business infrastructure, there is no chance of fleeing away or evading the statutory liabilities.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the Beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. He also submitted that the salaries of the employees have been intentionally bifurcated to avoid PF contribution and defeat the very purpose of the Act.

Considering the submission advanced by the counsel for both the parties an order need to be passed on the compliance/waiver of the conditions laid under the provisions of sec 7-O of the Act. There is no dispute on the facts that the commercial activities in all sectors are facing a backlash on account of the outbreak of COVID-19. At the same time it need to be considered that the period of default in respect of which inquiry was initiated are from 4/2013 to 5/18 and the amount assessed is 18,48,385/-Without going to the other details as pointed out by the appellant for challenging the order as arbitrary ,and at this stage of admission without making a roving inquiry on the merits of the appeal , it is felt proper to extend protection to the appellant pending disposal of the appeal keeping the principle of law laid down by the Hon'ble SC in the case of **MulchandYadav and another** .Thus on hearing the argument advanced,, it is felt proper and desirable that pending disposal of the appeal, the said amount be protected from being recovered from the appellant as has been held by the Appex court in the case of **MulchandYadav and Another vs Raja Buland Sugar Company and another reported in(1982) 3 SCC 484** that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

In view of the said principle laid down and considering the grounds taken in the appeal, the period of default, the amount assessed, it is felt that the circumstances do not justify total waiver of the condition of pre deposit. But the ends of justice would be met by reducing the amount of the said pre deposit from 75% to 20%. Accordingly the appellant is directed to deposit 20% of the assessed amount within 6 weeks from the date of this order towards compliance of the provisions of sec 7-O of the Act by way FDR in the name of the Registrar of the tribunal with provision for auto renewal. On compliance of the above said direction, the appeal shall be admitted and there would be stay on execution of the impugned order till disposal of the appeal. There would be an interim stay on the impugned order till the next date. Call the matter on 27-September-2021 for compliance of the direction.

(Presiding Officer)