

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-2, MUMBAI**

APPEAL NO. CGIT- 2 / EPFA 173/2024

M/s. SKN Sinhgad Institute of
Technology & Science.

- Appellant

V/s.

The Assistant Provident Fund Commissioner
EPFO, Pune.

- Respondent

ORDER

(Delivered on 25-02-2025)

M/s. SKN Sinhgad Institute of Technology & Science/appellant-applicant has challenged the legality of order dated 16.08.2024 passed u/s. 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1950, (for-short "EPF Act") in an appeal, which has been filed on 09.12.2024 and by these applications the applicant prays for condonation of delay in filing an appeal, waiver from pre-deposit of 75% amount as per Sec.7-O of the EPF Act and also for stay to the effect and operation of the order under appeal during pendency of lis.

2. According to the applicant, its institute is providing education with primary activity as a school and covered under EPF since 06.01.2019 and remitting monthly P.F. Contribution in accordance to the contract or employment entered in between employees employed has considered Hill Station Allowance which was not paid universally and that cannot be termed as basic wages, however after issuance of summons dated 28.02.2022, and conducting enquiry u/s. 7-A (1) (b) of the EPF Act passed illogical and illegal order for the period from 01/2019 to 12/2021.

The applicant added that, while passing the order the authority failed to appreciate that, Hill Station allowance was availed by such employee who worked at Hill Station Lonawala, various circulars issued by the authority time to time and without considering the tenable grounds, not accepting form No.11 submitted by them and also by disregarding the binding guidelines and evolving arbitrary methodology passed an order as such the order under appeal is illegal and improper.

3. The applicant further added that total dues were of Rs.77,87,409/-, dues paid Rs.38,83,224/- and residual dues are of Rs.39,04,181/- as such paid more than 51% dues assessed as such requested for waive pre-condition of deposit.

4. The applicant also added that, they received the order dated 16.08.2024 on 06.12.2024 and after due consultation, the appeal filed on 09.12.2024 as such the delay may kindly be condoned.

5. The respondent-opponent resisted these applications by reply. The opponent contended that, the establishment of the applicant failed to remit PF & other dues within statutory time limit for the period from 01/2019 to 12/2021 for an amount of Rs.39,04,181/-. During this period, the applicant only deposited the employees share for the said period but failed to produce their share. Not only this but, the applicant bifurcated wages in various heads however not considered Hill Station Allowance, as such there is no infirmity in the order under appeal.

6. The opponent further contended that, there is no genuine reasons nor exceptional circumstances for waiver of 75% of assessed amount as required as such the appeal cannot be

entertained unless the pre-deposit amount of 75% amount is deposited.

7. I have heard Mr. Chheda representative for the applicant & Mrs. Sawant advocate for the opponent.

It will not be out of place to mention here that, the applicant has challenged the order dated 16.08.2024, passed by the opponent in the present appeal, which has been filed on 09.12.2024 and only after due to consultation with legal luminaries the appeal has been filed. It seems that, the present appeal has not been filed within the prescribed period of limitation i.e., 60 days however the same has been filed within the extended period of limitation i.e., 120 days, therefore the applicant is certainly entitled for condonation of delay in filling an appeal.

8. Admittedly, the order under appeal has been passed in an enquiry which was based on summons dated 28.02.2022. The enquiry was continued from 10.03.2022 to 09.08.2024, in which the principal of the applicant alongwith advocate were present, produced various records. The enquiry was initiated for the period from 01/2019 to 12/2021. On careful perusal of the order under appeal and the various objections raised on behalf of the applicant such as Hill Station Allowance, excluded employees, clean & skipping charges, left employees, various circulars issued by the EPFO and splitting the grounds etc., raised in the appeal, certainly requires to be considered on merit and considering the aspect of Hill Station Allowance, all these grounds are arguable points on merit therefore it can be safely said that, the applicant has made out a prima-facie case at this stage. Considering the other facts and circumstances of the case, the balance of convenience also

lies in favour of the applicant and considering the comparative hardship, the applicant is certainly entitled for stay to the effect and operation of the order under appeal.

9. As regards waiver, as per Sec. 7-O of EPF Act, no appeal by employer shall be entertained by a Tribunal, unless employer has deposited with it 75% due from him as determined by an officer referred to in Sec.7-A, however as per proviso, the Tribunal may, for reasons to be recorded in writing waive or reduce that amount.

10. In the case in hand, though it is contended on behalf of the applicant about deposit of 51% amount, however after considering that amount, the authority has assessed the amount of Rs. 39,04,181/-, in the order under appeal, therefore the deposit of 51% amount is not much relevant, when by the amount of Rs.39,04,181/- has been determined in the order under appeal, therefore considering the points raised in the appeal, instead of 75% of amount, I am directing the applicant to deposit 50% of the amount assessed i.e., Rs.39,04,181/- in the order with the opponent within 08 weeks from the date of this order.

In the result, the applications are allowed, the delay in filling appeal is condoned. The respondent-opponent is directed to stay the effect and operation of the order under appeal only on depositing 50% of amount assessed in the order within 08 weeks from the date of order. Thereafter, only the appeal will be admitted.

Sd/-

Date: 25-02-2025

(Shrikant K. Deshpande)
Presiding Officer
CGIT -2, Mumbai

