

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.
(Pronounced from Camp Court at Mumbai)**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-1/28/2022

M/s. New Delhi Municipal Council

Appellant

VS.

APFC, Delhi (C)

Respondent

ORDER DATED :-18/07/2022

Present:- Shri Vaibhav Agnihotri & Piyush Jain, Ld. Counsel for the
appellant.
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

This order deals with the prayer made by the appellant during argument for admission of the appeal, insisting for a direction to the respondent to refund the amount recovered from the Bank account of the appellant, in alternate, not to disburse the said recovered amount to the beneficiaries, whose entitlement is under challenge, pending disposal of this appeal.

Argument on this prayer was heard being advanced by the counsel for both the parties.

The contention of the appellant is that the appellant and all other municipalities, came under scope of EPF&MP Act with effect from 08.01.2011. The appellant challenged the communication received in this regard on the ground that it's employees appointed before 2004 are entitled to pensionary benefits and employees appointed after 2004 are entitled to be governed under the NPS and requested for cancellation of the PF code allotted. But the respondent initiated the inquiry against the respondent u/s 7A of the Act for the retrospective period i.e from 2011 to 2015. The period of inquiry being considerably long and the documents relating to the wage and salary of the huge no of employees being voluminous the appellant requested deputation of the departmental representatives for verification of the records in the office of the appellant and cross check the demand raised. During this exercise it was pointed out that the appellant has engaged a large no of workforce through contractors having independent code no. amongst others objection was also raised with regard to the category of employees coming under the scope of the Act for the wage revision affected from 01.10.2011. The EO submitted his interim report on 18.01.2021 in respect of 62 field units though the respondent authority had instructed to verify the records in respect of 26 field units. Again a dispute was raised on this by the appellant establishment. But the commissioner without paying heed to the objections so raised denying the liability passed the impugned order. The details of the contractors engaged who have been allotted separate code

no by EPFO was not considered at all while passing the impugned order.

When the appellant was examining the records to challenge the impugned order, the respondent in exercise of the power u/s 8F(3)(iv) of the Act managed to recover Rs 10,60,54,182 from the account of the appellant.

The appellant has further stated that before filing this appeal, the appellant had approached the Hon'ble High Court of Delhi by filing WPC No 5180/2022 and the Hon'ble court by order dated 28.03.2022 directed for filing the appeal before this Tribunal. But during the pendency of the said writ application the entire assessed amount has been recovered. A prayer has thus been made for a direction to the respondent for refund of the recovered amount pending disposal of the appeal for the challenge made on the legality of the impugned order after retaining a part thereof as would be directed by the Tribunal towards compliance of the provisions of sec 7O of the Act.

Shri Rajesh Kumar the learned counsel representing the Respondent raised serious objection and submitted that the Act mandates deposit of 75% of the assessed amount as a precondition for filing the appeal and the amount since has been recovered before admission of the appeal and this Tribunal took cognizance of the same for admission of the appeal, no modification is permissible under the provisions of the Act.

Admittedly the entire assessed amount stands recovered. But the appellant has challenged the impugned order as illegal for non identification of the beneficiaries. In such a situation it is desirable that pending a final decision on the legality of the impugned order the amount which is meant to be credited to the account of the actual beneficiaries and not to enrich the account of the Respondent need to be protected. The said view has also been taken by the Hon'ble Supreme court in **Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in(1982) 3 SCC 484**. The Hon'ble Supreme court have held that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

Considering the facts of this matter it is felt desirable to pass some order to protect the recovered amount till disposal of the appeal on merit. Accordingly it is directed that the respondent shall not disburse the recovered amount to the account of any individual member and retain the same in an interest fetching account till the final order is passed in this appeal. Copy of the order be communicated to the respondent forthwith for necessary compliance and report to this tribunal within four weeks hence. Call the matter on 22.08.2022 for reply to be filed by the respondent to the appeal and compliance of the above said direction.

Presiding Officer

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.
(Pronounced from Camp Court at Mumbai)**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-1/29/2022

M/s. New Delhi Municipal Council

Appellant

VS.

APFC, Delhi (C)

Respondent

ORDER DATED :-18/07/2022

Present:- Shri Vaibhav Agnihotri & Piyush Jain, Ld. Counsel for the
appellant.
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

This order deals with the prayer made by the appellant during argument for admission of the appeal, insisting for a direction to the respondent to refund the amount recovered from the Bank account of the appellant, in alternate, not to disburse the said recovered amount to the beneficiaries, whose entitlement is under challenge, pending disposal of this appeal.

Argument on this prayer was heard being advanced by the counsel for both the parties.

The contention of the appellant is that the appellant and all other municipalities, came under scope of EPF&MP Act with effect from 08.01.2011. The appellant challenged the communication received in this regard on the ground that it's employees appointed before 2004 are entitled to pensionary benefits and employees appointed after 2004 are entitled to be governed under the NPS and requested for cancellation of the PF code allotted. But the respondent initiated the inquiry against the respondent u/s 7A of the Act for the retrospective period i.e from 2011 to 2015. The period of inquiry being considerably long and the documents relating to the wage and salary of the huge no of employees being voluminous the appellant requested deputation of the departmental representatives for verification of the records in the office of the appellant and cross check the demand raised. During this exercise it was pointed out that the appellant has engaged a large no of workforce through contractors having independent code no. amongst others objection was also raised with regard to the category of employees coming under the scope of the Act for the wage revision affected from 01.10.2011. The EO submitted his interim report on 18.01.2021 in respect of 62 field units though the respondent authority had instructed to verify the records in respect of 26 field units. Again a dispute was raised on this by the appellant establishment. But the commissioner without paying heed to the objections so raised denying the liability passed the impugned order. The details of the contractors engaged who have been allotted separate code

no by EPFO was not considered at all while passing the impugned order.

When the appellant was examining the records to challenge the impugned order, the respondent in exercise of the power u/s 8F(3)(iv) of the Act managed to recover Rs 4,67,28,208/- from the account of the appellant.

The appellant has further stated that before filing this appeal, the appellant had approached the Hon'ble High Court of Delhi by filing WPC No 5180/2022 and the Hon'ble court by order dated 28.03.2022 directed for filing the appeal before this Tribunal. But during the pendency of the said writ application the entire assessed amount has been recovered. A prayer has thus been made for a direction to the respondent for refund of the recovered amount pending disposal of the appeal for the challenge made on the legality of the impugned order after retaining a part thereof as would be directed by the Tribunal towards compliance of the provisions of sec 7O of the Act.

Shri Rajesh Kumar the learned counsel representing the Respondent raised serious objection and submitted that the Act mandates deposit of 75% of the assessed amount as a precondition for filing the appeal and the amount since has been recovered before admission of the appeal and this Tribunal took cognizance of the same for admission of the appeal, no modification is permissible under the provisions of the Act.

Admittedly the entire assessed amount stands recovered. But the appellant has challenged the impugned order as illegal for non identification of the beneficiaries. In such a situation it is desirable that pending a final decision on the legality of the impugned order the amount which is meant to be credited to the account of the actual beneficiaries and not to enrich the account of the Respondent need to be protected. The said view has also been taken by the Hon'ble Supreme court in **Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in(1982) 3 SCC 484**. The Hon'ble Supreme court have held that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

Considering the facts of this matter it is felt desirable to pass some order to protect the recovered amount till disposal of the appeal on merit. Accordingly it is directed that the respondent shall not disburse the recovered amount to the account of any individual member and retain the same in an interest fetching account till the final order is passed in this appeal. Copy of the order be communicated to the respondent forthwith for necessary compliance and report to this tribunal within four weeks hence. Call the matter on 22.08.2022 for reply to be filed by the respondent to the appeal and compliance of the above said direction.

Presiding Officer

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.
(Pronounced from Camp Court at Mumbai)**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-1/30/2022

M/s. New Delhi Municipal Council

Appellant

VS.

APFC, Delhi (C)

Respondent

ORDER DATED :-18/07/2022

Present:- Shri Vaibhav Agnihotri & Piyush Jain, Ld. Counsel for the
appellant.
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

This order deals with the prayer made by the appellant during argument for admission of the appeal, insisting for a direction to the respondent to refund the amount recovered from the Bank account of the appellant, in alternate, not to disburse the said recovered amount to the beneficiaries, whose entitlement is under challenge, pending disposal of this appeal.

Argument on this prayer was heard being advanced by the counsel for both the parties.

The contention of the appellant is that the appellant and all other municipalities, came under scope of EPF&MP Act with effect from 08.01.2011. The appellant challenged the communication received in this regard on the ground that it's employees appointed before 2004 are entitled to pensionary benefits and employees appointed after 2004 are entitled to be governed under the NPS and requested for cancellation of the PF code allotted. But the respondent initiated the inquiry against the respondent u/s 7A of the Act for the retrospective period i.e from 2011 to 2015. The period of inquiry being considerably long and the documents relating to the wage and salary of the huge no of employees being voluminous the appellant requested deputation of the departmental representatives for verification of the records in the office of the appellant and cross check the demand raised. During this exercise it was pointed out that the appellant has engaged a large no of workforce through contractors having independent code no. amongst others objection was also raised with regard to the category of employees coming under the scope of the Act for the wage revision affected from 01.10.2011. The EO submitted his interim report on 18.01.2021 in respect of 62 field units though the respondent authority had instructed to verify the records in respect of 26 field units. Again a dispute was raised on this by the appellant establishment. But the commissioner without paying heed to the objections so raised denying the liability passed the impugned order. The details of the contractors engaged who have been allotted separate code

no by EPFO was not considered at all while passing the impugned order.

When the appellant was examining the records to challenge the impugned order, the respondent in exercise of the power u/s 8F(3)(iv) of the Act managed to recover Rs. 16,27,48,258/- from the account of the appellant.

The appellant has further stated that before filing this appeal, the appellant had approached the Hon'ble High Court of Delhi by filing WPC No 5180/2022 and the Hon'ble court by order dated 28.03.2022 directed for filing the appeal before this Tribunal. But during the pendency of the said writ application the entire assessed amount has been recovered. A prayer has thus been made for a direction to the respondent for refund of the recovered amount pending disposal of the appeal for the challenge made on the legality of the impugned order after retaining a part thereof as would be directed by the Tribunal towards compliance of the provisions of sec 7O of the Act.

Shri Rajesh Kumar the learned counsel representing the Respondent raised serious objection and submitted that the Act mandates deposit of 75% of the assessed amount as a precondition for filing the appeal and the amount since has been recovered before admission of the appeal and this Tribunal took cognizance of the same for admission of the appeal, no modification is permissible under the provisions of the Act.

Admittedly the entire assessed amount stands recovered. But the appellant has challenged the impugned order as illegal for non identification of the beneficiaries. In such a situation it is desirable that pending a final decision on the legality of the impugned order the amount which is meant to be credited to the account of the actual beneficiaries and not to enrich the account of the Respondent need to be protected. The said view has also been taken by the Hon'ble Supreme court in **Mulchand Yadav and Another vs. Raja Buland Sugar Company and another reported in(1982) 3 SCC 484**. The Hon'ble Supreme court have held that the judicial approach requires that during the pendency of the appeal the impugned order having serious civil consequence must be suspended.

Considering the facts of this matter it is felt desirable to pass some order to protect the recovered amount till disposal of the appeal on merit. Accordingly it is directed that the respondent shall not disburse the recovered amount to the account of any individual member and retain the same in an interest fetching account till the final order is passed in this appeal. Copy of the order be communicated to the respondent forthwith for necessary compliance and report to this tribunal within four weeks hence. Call the matter on 22.08.2022 for reply to be filed by the respondent to the appeal and compliance of the above said direction.

Presiding Officer

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INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.
(Pronounced from Camp Court at Mumbai)**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-1/31/2022

M/s. New Delhi Municipal Council

Appellant

VS.

APFC, Delhi (C)

Respondent

ORDER DATED :-18/07/2022

Present:- Shri Vaibhav Agnihotri & Piyush Jain, Ld. Counsel for the
appellant.
Shri Rajesh Kumar, Ld. Counsel for the Respondent.

This order deals with the prayer made by the appellant during argument for admission of the appeal, insisting for a direction to the respondent to refund the amount recovered from the Bank account of the appellant, in alternate, not to disburse the said recovered amount to the beneficiaries, whose entitlement is under challenge, pending disposal of this appeal.

Argument on this prayer was heard being advanced by the counsel for both the parties.

The contention of the appellant is that the appellant and all other municipalities, came under scope of EPF&MP Act with effect from 08.01.2011. The appellant challenged the communication received in this regard on the ground that it's employees appointed before 2004 are entitled to pensionary benefits and employees appointed after 2004 are entitled to be governed under the NPS and requested for cancellation of the PF code allotted. But the respondent initiated the inquiry against the respondent u/s 7A of the Act for the retrospective period i.e from 2011 to 2015. The period of inquiry being considerably long and the documents relating to the wage and salary of the huge no of employees being voluminous the appellant requested deputation of the departmental representatives for verification of the records in the office of the appellant and cross check the demand raised. During this exercise it was pointed out that the appellant has engaged a large no of workforce through contractors having independent code no. amongst others objection was also raised with regard to the category of employees coming under the scope of the Act for the wage revision affected from 01.10.2011. The EO submitted his interim report on 18.01.2021 in respect of 62 field units though the respondent authority had instructed to verify the records in respect of 26 field units. Again a dispute was raised on this by the appellant establishment. But the commissioner without paying heed to the objections so raised denying the liability passed the impugned order. The details of the contractors engaged who have been allotted separate code

no by EPFO was not considered at all while passing the impugned order.

When the appellant was examining the records to challenge the impugned order, the respondent in exercise of the power u/s 8F(3)(iv) of the Act managed to recover Rs 9,15,01,373/- from the account of the appellant.

The appellant has further stated that before filing this appeal, the appellant had approached the Hon'ble High Court of Delhi by filing WPC No 5180/2022 and the Hon'ble court by order dated 28.03.2022 directed for filing the appeal before this Tribunal. But during the pendency of the said writ application the entire assessed amount has been recovered. A prayer has thus been made for a direction to the respondent for refund of the recovered amount pending disposal of the appeal for the challenge made on the legality of the impugned order after retaining a part thereof as would be directed by the Tribunal towards compliance of the provisions of sec 7O of the Act.

Shri Rajesh Kumar the learned counsel representing the Respondent raised serious objection and submitted that the Act mandates deposit of 75% of the assessed amount as a precondition for filing the appeal and the amount since has been recovered before admission of the appeal and this Tribunal took cognizance of the same for admission of the appeal, no modification is permissible under the provisions of the Act.

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INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE
AVENUE, DISTRICT COURT COMPLEX, DELHI.
(Pronounced from Camp Court at Mumbai)**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-1/32/2022

M/s. New Delhi Municipal Council

Appellant

VS.

APFC, Delhi (C)

Respondent

ORDER DATED :-18/07/2022

Present:- Shri Vaibhav Agnihotri & Piyush Jain, Ld. Counsel for the
appellant.
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the contractors engaged who have been allotted separate code no by EPFO was not considered at all while passing the impugned order.

When the appellant was examining the records to challenge the impugned order, the respondent in exercise of the power u/s 8F(3)(iv) of the Act managed to recover Rs. 13,08,96,210/- from the account of the appellant.

The appellant has further stated that before filing this appeal, the appellant had approached the Hon'ble High Court of Delhi by filing WPC No 5180/2022 and the Hon'ble court by order dated 28.03.2022 directed for filing the appeal before this Tribunal. But during the pendency of the said writ application the entire assessed amount has been recovered. A prayer has thus been made for a direction to the respondent for refund of the recovered amount pending disposal of the appeal for the challenge made on the legality of the impugned order after retaining a part thereof as would be directed by the Tribunal towards compliance of the provisions of sec 7O of the Act.

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Presiding Officer