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**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL**  
**CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,**  
**JABALPUR**

**NO. CGIT/LC/EPFA-2/2022**

**PRESENT: P.K.SRIVASTAVA**  
**H.J.S.(Retd.)**

**M/S G4S Secure (Solutions)India Pvt. Ltd.**

**APPELLANT**

**Versus**

**Employees Provident fund Organisation & Another**

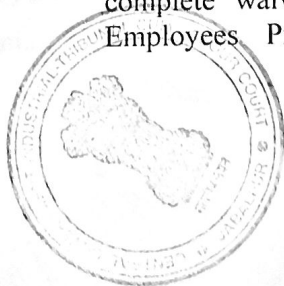
**RESPONDENT**

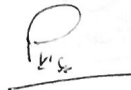
**(ORDER)**

**(Passed on 6-5-2022 )**

1. The application dated 15-2-2022 has been filed by the Appellant Establishment in terms of order dated 7-2-2022 passed by the Hon'ble High Court of Chhattisgarh in Writ Petition(L) No.17/2022 wherein following prayers has been made:-

No.1:- That this Tribunal may kindly pass an order for complete waiver of requirement under Section 7(O) Employees Provident Fund And Misc. Provisions



  
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Act,1952, herein after referred to the word Act", for deposit of 75% of amount under Appeal.

No.2:- Pass any such further order which this Tribunal may deem fit and proper in the interest of justice, so as to give complete relief to the Applicant herein.

This application has been accompanied with an affidavit of Authorised Representative of the Appellant Establishment and copy of order of Hon'ble High Court of Chhattisgarh, Bilaspur in W.P.(L) 17/2022. The Respondent has preferred a written objection to this application which is on record. I have heard learned counsel for Appellant Shri K.N.Pethia and Shri J.K.Pillai, learned counsel for the Respondent and have gone through the record.

2. Facts connected in brief are that the EPF Appeal No.2/2022 was filed by the Appellant Establishment against the order of Respondent Authority passed under Section 7A of the Act on 24-12-2021, holding the appellant Establishment liable to pay the employees provident fund dues of its employees with respect to the conveyance allowance paid by the Appellant Establishment to its employees and assessed the amount at Rs.2,99,03,143/-. The Respondent Authority found that the allowance which was claimed by the Appellant Establishment as conveyance allowance was under the obligation to pay the employees provident fund dues on this amount also.
3. At the time of entertaining the appeal for hearing, an application was filed by the appellant establishment under Section 7(O) along with affidavit seeking waiver from deposit of 75% of the amount under appeal. After hearing both the parties on this



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application, an order was passed on 13-1-2022 holding that the appellant has successfully established a prima facie case in this respect in his favour and also considering the financial crunch as submitted by learned counsel for the Appellant Establishment and the fact that the appellant had been regularly depositing the employees provident fund dues and amount under appeal is an additional assessment with regard to which there has been a litigation between the parties before the coordinate benches of this Tribunal and before the High Court. The Appellant was thus directed to deposit only 40% of the amount under appeal and on condition of this deposit, the appeal was ordered to be entertained for hearing. It was also provided in the aforesaid order that on compliance of this condition, there shall be a stay on recovery of any amount under this appeal and 30 days time was granted to the Appellant Establishment for compliance.

4. The Appellant preferred to file a writ Petition before Hon'ble High Court of Chhattisgarh at Bilaspur . It was registered as W.P.(L) No.17/2022 and was finally disposed by Hon'ble High Court of Chhattisgarh vide order dated 7-2-2022. The order is being reproduced as follows:-

***“1.After arguing for some time, learned counsel for the petitioner would submit that the submission raised by them has not been considered by the learned Tribunal. A direction to learned Tribunal to re-consider the same will serve the purpose.***



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*2. Considering the submission made by the learned counsel for the petitioner, the writ petition(L) is disposed off with a direction that the petitioner may file appropriate application for waiver before the Tribunal and the same shall be considered by the Tribunal in accordance with law.*

*3. With the above, direction, the writ petition(L) is disposed off."*

5. It is in the light of this direction of Hon'ble High Court of Chhattisgarh, the Appellant has filed this petition which is being disposed.

6. The Appellant has raised the following points in this petition:-

**No.1:-Prima facie case on merits is a vital factor and is to be considered for adjudication of waiver application.**

**No.2:- Coordinate Benches of this Tribunal have passed 100% waiver on earlier occasions where conveyance allowance were subjected to additional provident fund contribution.**

**No.3:-Coordinate Benches of this Tribunal have passed 100% waiver order in serval other cases and there are precedents for 100% waiver.**

**No.4:- The impugned order is a nullity hence, no pre deposit can be mandated in terms of a null and void order.**

**No.5:-The inquiry was initiated without following the mandate, binding guidelines and in such cases either**



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proceedings have been stayed or coercive action in the light of final order has been stayed without any pre deposit by Hon'ble High Courts' in the case of Appellant itself.

**No.6:-The Appellant has an excellent case on merits as the impugned order is perverse and illegal.**

**No.7:- Appellant has paid provident fund of Rs.48712791/- on gross wages of Rs.191726484/- and order under Appeal is only with respect to additional provident fund which is wrongly calculated.**

7. The case of the Respondent Authority in reply to the application is that the entire contention are misconceived. The impugned order is perfect in law and fact. The appellant Establishment does not even have a prima facie case. This Tribunal has already been gracious enough to grant waiver. The appellant does not deserve any further waiver in this respect and there is no occasion of review of order dated 13-1-2022.

8. The appellant Establishment has relied on following Judgments:-

**1.Bridge & roofs Col Ltd. Vs. Union of India and Ors. AIR(1963) SC 1474.**

**2.Manipal Academy of Higher Education Vs. Provident Fund Commissioner,(2008) 5 SCC 428.**

**3.Kichha Sugar Company Limited Vs. Tarai Chini Mill Jajdopor Union, Uttarakhand,Civil Appeal No. 77/2014 (Manu/SC/0007/2014)**



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4. *Employees State Insurance Corporation Vs. M/s Texmo Industries, , SLP No.811/2021 (2021 SC Online SC 434).*
5. *Management of Oriental Hotels Ltd. Chennai Vs. Employees State Insurance Corporation ,Chennai (2000) SCC Online Mad.776.*
6. *Prem Motors Pvt. Ltd. Vs. Employees Provident Fund Organisation, (2016) 2 MPLJ 148:.*
7. *Home Secretary U.T. of Chandigarh & anr. Vs. Darshjit Singh Grewal & Anr.(1993) 4 SCC 25.*
8. *Ranadev Micronutrients vs. Collector of Central Excise(1996) 10 SCC 387.*
9. *Collector Of Central Excise, Patna Vs. Usha Martin Industries(1997) 7 SCC 47.*
10. *Babu Vargese and Ors. Vs. Bar Council of Kerala & Ors(1999) 3 SCC 422.*
11. *Nazir Ahmed Vs. King Emperor,(1980) 3 SCC 1.*
12. *Food Corporation of India Vs. Provident Fund Commissioner (1990) 1 SCC 68.*
13. *Bharat Heavy Electricals Ltd. Vs. Employees State Insurance Corporation(2008) 3 SCC 247.*
14. *Assistant Provident Fund Commissioner Vs. M/s Nandlal and Company through its partner(2016) SCC Online Pat 2402.*
15. *Indian Drugs and Pharmaceuticals Ltd.& Ors. Vs. Employees State Insurance Corporation & Ors.(1997) 9 SCC 71.*
16. *Marathwada Gramin Bank Karmachari Sangathan Vs. Management of Marathwada Gramin Bank(2011) 9 SCC 620.*
17. *Hindustan Sanitaryware & Ors. Vs. State of Haryana(2019)15 SCC 774.*
9. No case law has been referred from the side of the Respondent.



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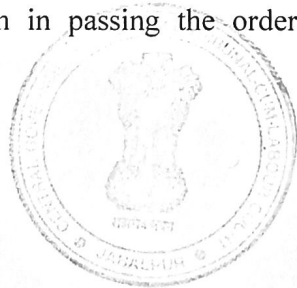
10. The main thrust of argument of learned counsel for the Appellant is with regard to the observation of this Tribunal made by it in the order dated 13-1-2022 at page No.3 wherein it has been mentioned that merits of the appeal cannot be looked into at the stage of admission. Learned Counsel has submitted that to reach at a conclusion whether a prima facie case is made out in favour of the Appellant, the Tribunal will have to look into the merits. It has been recorded in this order that the Appellant has been successful in raising some points to be considered regarding the merits of the impugned order(order under appeal), hence it can be said that he has a prima facie case in his favour as it has been laid down in the case laws referred to above which have been submitted from the side of the Appellant that prima facie case means whether the Appellant/applicant has been successful in showing the Court or Tribunal that he has an arguable case in his favour and nothing more. Prima facie cases cannot be taken to have been established only when the appeal is bound to succeed. To reach a conclusion whether the Appellant has successfully made out some arguable points in his favour in the present appeal, no doubt the merits of the appeal will be looked into but in a limited sense, in other words a broad and in-depth analysis of merits of the appeal at the stage of admission of the appeal or considering the waiver application is not required in law, as it has been laid down in the case laws referred to by the Appellant. When there is a finding that the Appellant has successfully made out a prima facie case in his favour, naturally the merits of the appeal has been looked into to reach at this finding but in limited sense to ascertain only whether the Appellant has



  
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successfully made out some arguable case or point in his favour or not. No where it has been laid down in the cases law referred to by learned Counsel for the Respondent that an incisive and in depth consideration of merits is required at this stage for considering waiver. The learned counsel for Appellant has made out certain points as referred to above in his petition with regard to the merits of the appeal. The Tribunal is not required to express its views on each and every point respectively at this stage but on considering these points, this Tribunal is again of the view that the Appellant has successfully made out a prima facie case in his favour with regard to consideration of his application for waiver and admission of appeal.

11. As the order dated 13-1-2022 reveals the financial crunch and financial strain faced by the Appellant Establishment, has also been considered as it is evident from the perusal of second paragraph of page no.3 of the order. The contention of the Appellant Establishment that it has been regularly depositing employees provident fund dues and that the amount under Appeal is an additional assessment has also been taken into consideration, for reaching at a conclusion on waiver application. Further more the fact that there has been litigation between the parties before the coordinate Benches of this Tribunal and before Hon'ble High Court and enormity of the amount under Appeal has also been taken into consideration in passing the order and after considering all the



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factors as mentioned above, the order dated 13-1-2022 has been passed granting partial waiver to the Appellant.

12. In the light of the above discussion, I am of the considered view that the relief sought in the application is not justified in law or fact to be granted. Consequently the application is dismissed. Applicant is given time for two week's from today for compliance of order dated 13-1-2022.

13. Respondents to counter within 30 days from today with documents after serving a copy thereof to learned counsel for the appellant. Rejoinder if any, within 15 days thereafter.

14. List the case on \_\_\_\_\_ for final arguments.

  
(P.K.SRIVASTAVA)

**PRESIDING OFFICER**  
**Date:6-5-2022**

