

ORDER SHEET
CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR(MP)

CASE NO. CGIT/LC/EPFA/23/2018
M/s tops Security Limited Vs. RPFC, Bhopal

Date of order of proceeding	Order or proceeding with signature of Presiding Officer	Signature of parties or pleaders where necessary
7-4-2022	<p>Shri Ashok Shrivastava, learned counsel for the appellant. Shri J.K.Pillai, learned counsel for the respondent.</p> <p>Parties through their counsel. Heard learned counsel for the appellant.</p> <p>Heard both the learned counsel on the maintainability of appeal, i.e. on the point of admission.</p> <p>Perused the record.</p> <p>The Appeal has been filed by Appellant against the order dated 8-9-2018 passed by the Respondent Authority and sent to the Appellant Establishment wherein it has been stated that certain amount has been found due with respect to employees provident fund deposits of employees within the period April-2015 to March-2018 and the appellant was required to deposit the same amount within seven days , failing which action would be taken.</p> <p>Learned Counsel for Respondent has submitted that this appeal is not maintainable against such an order because the impugned order is not a final order, it is simply a notice to the appellant to appear before the Authority and deposit the amount , if the appellant thinks that he is not under obligation to pay the amount, he is at liberty to raise a dispute by way of filing an objection in respect to the notice. The Respondent Authority will pass a final order after making an inquiry as provided in the Employees Provident Fund and Misc. Provisions Act,1952(hereinafter referred to as the word 'Act'). He has referred to Section 7A of the Act in this respect, which is being reproduced as follows:-</p> <p style="text-align: center;">4[7A. Determination of moneys due from employers. – 5[(1) The Central Provident Fund commissioner, any</p>	



Additional Central Provident Fund Commissioner, any deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,-

(a) In a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) Determine the amount due from any employer under any provision of this Act, the Scheme or the ¹[Pension] Scheme ²[or the Insurance Scheme], as the case may be, And for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:-

(a) Enforcing the attendance of any person or examining him on oath;

(b) Requiring the discovery and production of documents;

(c) Receiving evidence on affidavit;

(d) Issuing commissions for the examination of witnesses,

And any such inquiry shall be deemed to be a judicial proceeding within the meaning of section 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860).

(3) No order ¹[***] shall be made under sub-section (1), unless ²[the employer concerned] is given a reasonable opportunity of representing his case.

³[(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employers, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

⁴[(4) Where an order under sub-section (1) is passed against an employer ex-parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry ;

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation. - Where an appeal has been preferred under

this Act against an order passed ex-parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex-parte order.

(5) No order passed under this section shall be aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.].

Perusal of Section 7A clearly reveals that if the Provident Fund Commissioner finds that any amount is due from any employer, he may determine such amount and may conduct such an inquiry as he may deem necessary. It is also established that no order shall be made under Section 7A(1) unless the employer has been given a reasonable opportunity of representing the case.

From the perusal of Section 7A, it is clear that if the appellant establishment disputes the liability, the Respondent Authority is under obligation to conduct an inquiry and then pass a final order regarding their dues. There is no such final order passed by the Respondent Authority which is under challenge, in this appeal. What is under challenge is the order regarding issuing notice and the notice itself, which are interlocutory, if not intermittent in nature against which the appeal is not maintainable.

Accordingly, holding the present appeal not maintainable, it is disposed of accordingly at admission stage itself.

Needless to say that the appellant is at liberty to appear before the Respondent Authority and put his case in the form of reply to the notice. If it disputes the liability, the Respondent Authority will follow the procedure laid in Section 7A of the act and pass a final order.

No order as to costs.


PRESIDING OFFICER