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

**NO. CGIT/LC/EPFA-44-2019**

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

**Bhopal Cooperative Central Bank Ltd.**

**APPELLANT**

**Versus**

**The Regional Provident Fund Commissioner**  
**Bhopal(M.P.)**

**RESPONDENT**

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**Shri Ashok Shrivastava : Learned Counsel for Appellant.**

**Shri J.K.Pillai : Learned Counsel for Respondent.**

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**(J U D G M E N T)**

**(Passed on 16-6-2022 )**


1. Under challenge in this appeal is order of Respondent Authority dated 30-8-2017 and 23-7-2019 passed by the Respondent Authority under Section 7A of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word 'Act', holding the appellant establishment responsible for payment of employees



provident fund dues of its daily wage and contractual workers within the period January-2003 to September-2016 and assess the amount to the tune of Rs. 77,55,999/- under Section 7A vide order dated 30-8-2017(hereinafter referred to by the word 'First Order'). The second order appealed against is the notice to show cause why warrant of arrest be not issued to the Appellant Establishment for recovery of amount assessed by the First order. This notice to show cause dated 23-7-2019 will be referred ( hereinafter by the word Second Order').

2. Facts connected in brief are mainly that the Appellant Establishment is a Co-operative Society Registered in M.P.Cooperative Societies Act,1960 engaged in banking. The employees provident fund dues of its regular employees are deducted and deposited by Appellant Establishment vide the impugned First Order, the Respondent Authority held the workman engaged by the Appellant Establishment as a daily wager or as contract employees for its work as workman under Section 2F of the Act and also held such workers entitled to protection of the Act. The Respondent Authority further held the Appellant Establishment in defaulting payment of employees provident fund dues of such workers within the period January-2003 to September-2016 and assessed the amount to the tune of Rs.77,55,999/-. It is the case of the Appellant Establishment that they preferred a Writ petition No.12244/2017 before Hon'ble High Court of M.P. in Jabalpur challenging the order dated 31-7-2017. There is an order of status



  
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quo passed by Hon'ble High Court of M.P. on 31-8-2017. It comes out from the perusal of the record in P-5 filed with the Memo of Appeal that this Writ Petition No.12244/2017 was disposed by Hon'ble High Court vide its order dated 19-3-2019 and was dismissed as withdrawn with liberty to seek remedy before the appropriate forum. Hon'ble High Court also directed the Respondent in the writ to decide the same dispassionately in accordance with law. It is further the case of the Appellant Establishment that he filed an application before the Respondent Authority on 12-4-2017 Annexure P-8 to the memo of appeal taking a stand that the daily wager and contractual employees working under the Appellant Establishment are not workman as defined under Section 2(S) of the Industrial Disputes Act,1947, hence the appellant establishment is not under obligation to deposit their employees provident fund dues. Also it was prayed by the Appellant Establishment that witness be summoned for cross-examination by the Appellant Establishment but the Respondent Authority did not care to dispose this application dated 12-4-2017 and passed the order dated 23-7-2019 i.e. Second Order show causing why the warrant of arrest should not be issued for recovery of amount.

3. The grounds of appeal taken are mainly that the Respondent Authority committed illegality in recording the finding that casual and daily wage workers working for the appellant establishment were employees for the purposes of the Act and also committed



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illegality in recording the finding that these employees were covered under the Act and that the Appellant Establishment had defaulted payment of employees provident fund dues of such employees within the period 2-1-2003 to September-2016. The Respondent Authority passed the impugned orders without following the principles of natural justice and without giving the appellant Establishment an opportunity to examine the witness.

4. In its reply/counter, the case of the Respondent Authority is mainly that a complaint was filed by one Manoj Sharma regarding default in depositing employees provident fund dues. A detailed inspection was carried out by the concerned Enforcement Officer after issuing show cause notice and after full fledged inquiry under Section 7A of the Act, giving sufficient and proper opportunity to the Appellant Establishment, the first order dated 30-8-2017 was passed by the Respondent holding the contractual and daily wage employees of the Appellant Establishment as employees as defined under Section 2(f) of the Act and also recording finding that the Appellant Establishment had deducted payment of employees provident fund dues of such employees within the period January-2003 to September-2016. This finding of the Respondent Authority cannot be faulted in law or fact. This has been recorded on the basis of evidence on record produced by the Appellant Establishment before the Respondent Authority. The amount was assessed also on the basis of evidence on record produced by the Appellant Establishment before the Respondent Authority. The amount was



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assessed also on the basis of records produced, hence assessment also does not warrant interference. It is further the case of the Respondent Authority that the first order has become final between the parties because it was not set aside by any Appellate Party or by Hon'ble High Court. This is also the case of the Respondent Authority that the second order is only consequential to the first order which has become final between the parties and also that the application of the Appellant Establishment dated 12-4-2019 filed before the Respondent Authority in the light of order of Hon'ble High Court in W.P.No.12244/2-017 dated 19-3-2019 has been complied with fully by the Respondent Authority in the order dated 13-8-2019 passed by the Respondent Authority by which the application has been disposed. Thus according to the Respondent, the appeal deserves to be dismissed with cost. The Appellant Establishment has filed a rejoinder wherein it has mainly reiterated its case.

5. I have heard arguments of Advocate Shri Ashok Shrivastav for the Appellant Establishment and Shri J.K.Pillai for the Respondent Authority and have gone through the record.
6. The following points come up for determination after perusal of records in the light of rival arguments.



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**(1)Whether the first order dated 30-8-2017 passed by the Respondent Authority under Section 7A of the Act has attained finality between the parties.**


**(2)Whether the show cause dated 23-7-2019 i.e. Second Order is consequential to the first order.**

**7. POINT FOR DETERMIANTION NO.1:-**

It is not disputed between the parties that the first order under Section 7A of the Act was passed on 30-8-2017. The period of limitation prescribed for the appeal against order under Section 7A of the Act is 60 days from the date of the order which can be further extended to another 60 days as mentioned in Rule 7(2) of the Employees Provident Fund Tribunal Rules,1997 mentioned as under:-

**“Any person aggrieved by a notification issued by the Central Government or an order passed by a the Central Government or any other Authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal, provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days”**

8. The present appeal has been filed only on 5-9-2019. The case of the Appellant Establishment as submitted by learned counsel for the Appellant is that the Appellant Establishment had preferred a W.P.No.12244/2017 which was dismissed as withdrawn with liberty to file a properly constituted application summoning record before the Respondent Authority, hence the period of limitation should be constituted from the date of passing order by the Respondent

  
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Authority on his application of Appellant Establishment dated 12-4-2019 order disposing this application was passed on 13-8-2019. Learned Counsel for the Respondent Authority has opposed this submission.

9. Perusal of the record Annexure P-5 with Memo of Appeal goes to show that Writ petition No.12244/2017 was filed before Hon'ble High Court on 10-8-2017 and order maintaining status quo was passed by Hon'ble High Court on 31-8-2017 whereas the First Order under Section 7A of the Act was already passed by the Respondent Authority on 30-8-2017 i.e. before the order maintaining status quo was passed by the Hon. High Court. The order dated 19-3-2019 passed by the Hon'ble High Court in the aforesaid Writ Petition reads as follows:-

**Jabalpur, Dated 19-3-2019**

**Shri Ashok Shrivastav, Counsel for the Petitioner.**

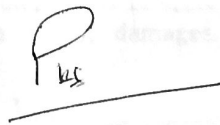
**Shri J.K.Pillai, GA for respondents/State.**

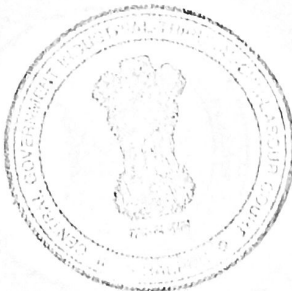
Shri Shrivastav after arguing for some time prays for withdrawal of this petition with liberty to file properly constituted application summoning the record/document.

Shri Pillai, G.A. has not objection.

Petition is dismissed as withdrawn with the liberty prayed for.

In the interest of justice, it is observed that if any such application is preferred it will be lawful for the respondents to decide the same dispassionately in accordance with law."





10. It comes out from perusal of this order dated 19-3-2019 that direction was given to the Respondent in the writ i.e. Respondent Authority in the present appeal to decide the application filed for summoning record/documents dispassionately in accordance with law. The application dated 12-4-2019 was filed by appellant and was disposed by the Respondent Authority vide order dated 30-8-2019 with a finding that final order had already been passed which has not been set aside.

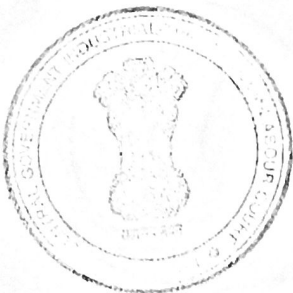
11. It is established now from the above discussion that the appellant establishment did not care to file appeal against the First Order passed under Section 7A by the Respondent Authority within time of limitation. Hence the First order has undoubtedly attained finality between the parties and it cannot be agitated now in this appeal. **Point for determination No.1 is answered accordingly.**

12. **POINT FOR DETERMINATION NO.2:-**

The second order as it comes out from the perusal is the order consequential to the First Order passed during the process of recovery under Section 8, 8A, 8B and 8C of the Act is being reproduced as follows:-

**8. Mode of recovery of money due from employers.- Any amount due-**

(a) From the employer in relation to 2[an establishment] to which any 3 3[Scheme or the Insurance Scheme] applies in respect of any contribution payable to 4[the Fund or, as the case may be, the Insurance Fund,] damages recoverable under



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section 14B, accumulations required to be transferred under sub-section (2) of section 15 5[or under sub-section (5) if section 17] or any charges payable by him under any other provision of this Act or of any provision of the 3[Scheme or the Insurance Scheme]; or

(b) From the employer in relation to an exempted 2[establishment] in respect of any damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified 6[under section 17 or in respect of the contribution payable by him towards the 7[Pension] Scheme under the said section 17], may, if the mount is in arrear, be recovered 8[in the manner specified in section 8B to 8G.]

**8A. Recovery of moneys by employers and contractors. -**

(1) 2[The amount of contribution (that is to say, the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme)] and any charge 3[\*\*\*] for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

(2) A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him may recover from such employee the employee's contribution 4[under any Scheme] by deduction from the basic wages, dearness allowance and retaining allowance (if any) payable to such employee.

(3) notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (1) from the basic wages, dearness allowance, and retaining allowance (if any) payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

Explanation. - In this section, the expressions "dearness allowance" and "retaining allowance" shall have the same meanings as in section 6.]

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**8B. Issue of certificate to the Recovery Officer. –**

(1) where any amount is in arrear under section 8, the authorised officer, May issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below:-

(a) attachment and sale of the moveable or immovable property of the establishment or, as the case may be, the employer;

(b) arrest of the employer and his detention in prison;

Provided that the attachment and sale of any property under this section shall first be effected against the properties of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount or arrears specified in the certificate, the Recovery Officer may take such proceeding against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorised officer may issue a certificate under subsection (1), notwithstanding that proceeding for recovery of the arrears by any other mode have been taken.

**8C. Recovery officer to whom certificate is to be for warded.-**

(1) The authorised officer may forward the certificate referred to in section 8B to the Recovery Officer within whose jurisdiction the employer-

(a) carries on his business or profession or within whose jurisdiction the principal place of his establishment is situate; or

(b) Resides or any movable or immovable property of the establishment or the employer is situate.

(2) Where an establishment or the employer has property within the jurisdiction of more than one Recovery Officers and the Recovery Officer to whom a certificate is sent by the authorised officer-

(a) is not able to recover the entire amount by the sale of the property movable or immovable, within his jurisdiction: or

(b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do, He may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to



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the Recovery Officer within whose jurisdiction the establishment or the employer has property or the employer resides, and thereupon that Recovery Officer shall also proceed to recover the amount due under this section as if the certificate or the copy thereof had been the certificate sent to him by the authorised officer.


13. Section 7(1) of the Act does not provide an appeal from order passed under Section 8A, 8B and 8C of the Act, hence ; this appeal is not maintainable against the Second Order regarding show cause and Point for determination No.2 is answered accordingly.

14. On the basis of the above discussion the appeal sans merits and deserves to be dismissed.

**ORDER**

**Appeal stands dismissed.**

**No order as to cost.**

  
(P.K.SRIVASTAVA)

**PRESIDING OFFICER**

**JUDGMENT SIGNED , DATED AND PRONOUNCED.**

  
(P.K.SRIVASTAVA)

**PRESIDING OFFICER**

**Date:16-6-2022**

