

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1**

**MUMBAI**

Present

Smt. Pranita Mohanty, Presiding Officer

National Textile Corporation Ltd (WR)

Vs.

1. APFC, Bandra
2. S.D.Phansekar

**CGIT-1/EPFA-24 OF 2020**

**Appearance:**

For the Appellant : Mr.M.V.Bhat, Adv.

For Respondent No.1 : Mr. Ravi Rattesar, Adv.

For Respondent No.2 : Mr.S.D.Phansekar

Mumbai, dated the 22nd day of July, 2022.

**ORDER**

This order deals with the admission of the appeal and consideration of the application filed under section 7-O of the EPF & MP Act. The earlier order shows

that the appeal once filed after expiry of the period of limitation prescribed under the act. But this Tribunal by order dated 3.6.2021, have condoned the period of delay. Hence, this matter is now for consideration of the 7-O application and admission.

The appellant appearing through his counsel has stated that it is an unit of National Textile Corporation, Govt. of India undertaking. At one point of time, an industrial dispute was raised between the appellant and its employee Sadanand Dharmaraj Pansekar who is respondent No.2 of this appeal. The matter was adjudicated by the Labour Court and award dated 23.4.2001, directed that the appellant shall provide work to the respondent no.2 and pay salary to him with other attendant benefits with effect from 1.1.1990. The appellant was further directed to provide work to the said respondent. Pursuant to the said award, the appellant employer made payment of the arrear with to the employee i.e. respondent no.2 but no deduction was made in respect of the PF contribution. The APFC initiated an enquiry under section 7-A of the Act for the period 1989 - 90 and 2005 to 2006 though the appellant had appeared and put out a defence stating that the employees share was never deducted and PF dues are not payable on the back wages, the respondent authority did not consider the same and assessed Rs.89137/- payable towards PF contribution on the back wages paid to respondent no.2. Being aggrieved, the present appeal has been filed.

During course of argument the learned counsel for the appellant argued that the law is very settled about the liability for PF dues on the back wages. No liability being due the order is liable to be set aside. He thereby argued that the appellant has a fair chance of success in the appeal if the appeal would not be admitted and there would not be a complete waiver of the condition laid under second 7-O of the

Act serious prejudice shall be caused. He also prayed for an unconditional stay on the execution of the impugned order pending disposal of the appeal.

The AR for the respondent no.1 has filed a written reply to the application filed by the appellant for waiver of the pre-condition of stay. The learned counsel for both the respondents made elaborate arguments to oppose the stand taken by the appellant.

On perusal of the impugned order, it is evident that the main grievance of the appellant is with regard to the PF liability on the back wages. The Commissioner in his order has relied upon the judgment of Sri Changdeo Sugar Mills and another vs. Union of India and the judgment of Oswal Petrochemicals vs. Union of India decided by the Hon'ble High Court of Delhi to conclude that when the wage was paid, the employer is under the obligation of making deduction of the PF dues and depositing the same with the EPFO. Para 30 (3) of the EPF scheme creates a responsibility in that regard.

On hearing the submission a decision is to be taken on the prayer of waiver as made by the appellant. The appellant has not made out a case of total waiver. The provisions of para 30(3) of the EPF scheme fastens the primary liability of the employer for deducting and depositing the PF dues whenever wage is paid. May it be back wages. In that view of the matter, it is not felt proper to order a total waiver. The interest of justice would be served by directing the appellant to deposit 25% of the assessed amount towards compliance of the provisions of section 7-O of the Act. Accordingly, the appellant is directed to deposit 25% of the assessed amount with the EPFO within 4 weeks from the date of this order. On compliance

of the said order, the appeal shall admitted, and there would be an interim order of stay on the execution the interim order till disposal of the appeal.

Call the matter on..... for compliance of the direction given in this order. Till then, the respondent authority shall not take any coercive action against the appellant.

PRESIDING OFFICER  
CGIT-1, MUMBAI