

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE AVENUE,  
DISTRICT COURT COMPLEX, DELHI.**

Present:

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

**ATA No.D-1/34/2021**

M/s State Council of Educational Research and Training

Appellant

Vs.

Central Board of Trustees & Anr.

Respondent

**ORDER DATED:- 26.10.2021**

Present:- Shri Rajiv Shukla & Shri Sanjay Kumar, Ld. Counsel for the Appellant.  
Shri B.B Pradhan, Ld. Counsel for the Respondent.

This order deals with two separate petitions filed by the appellant praying condonation of delay for the admission of the appeal and waiver of the condition prescribed u/s 70 directing deposit of 75% of the assessed amount as a pre condition for filling the appeal on the grounds stated in the petition.

Copy of both the petition being served on the respondent, Ld. Counsel B.B. Pradhan appeared and participated in the hearing though he did not file written objection.

The record reveals that the impugned order u/s 7A was passed by the respondent on 31.03.2021 and the appeal has been filed on 06.09.2021. Thus the Registry has objected about the appeal being filed beyond the period of limitation. The Ld. Counsel for the appellant has submitted that the delay in filing the appeal is not intentional but for the prevailing situation beyond the control of the appellant. Citing the order passed by the Hon'ble Supreme Court in suo moto WPC No. 03/2020 he submitted that for the extension of limitation granted by the Hon'ble Supreme Court in respect of all the cases, proceedings and appeals, under the General or Special Law which has been allowed until further orders this tribunal should exercise the discretion for condonation of delay for admitting the appeal. The Ld. Counsel for the respondent fairly conceded that in the prevailing situation of Covid-19 it was not possible to file the appeal within the period of limitation. He also conceded to the direction of the Hon'ble Supreme Court for condonation of delay. Thus, taking all these aspects into consideration it is held that the delay in filing the appeal is not intentional but for a reason beyond the control of the

appellant. It is thus, held to be a fit case where the period of limitation need to be condoned as has been directed by the Hon'ble Supreme Court. The petition for condonation of delay is accordingly allowed.

The other petition filed by the appellant is for waiver/reduction of the pre deposit amount contemplated u/s 70 of the Act. The Ld. Counsel for the appellant submitted that the impugned order has been passed on the basis of the complaints received from the contractual employees regarding non extension of PF Benefits to them since the year 2008. The said complaints were never shown to the appellant. On the basis of the report prepared by the squad of the Eos and the amount proposed by them the assessment was made. The said assessment has been made in respect of the pre discovery period during which no recovery towards the employee share was made by the establishment. Not only that no proper and effective hearing was conducted by the commissioner and the salary register etc produced by the appellant/establishment were not considered properly. Though the salary register was containing the names of 32 employees who had already left the service of the appellant/establishment the same was not considered. For the self same period the EPFO has initiated another inquiry in respect of its permanent employees. The commissioner while discharging the quasi judicial function never considered the documents placed by the establishment and violated the basic Principles of Natural Justice by not providing the complaints which were the basis of the inquiry and by not considering the documents and evidence placed by the appellant. Citing all these reasons the Ld. Counsel for the appellant submitted that the appellant has a strong case to argue having fair chances of success. The EPFO has already recovered the entire amount assessed. It is an organization which survives on the grants received from the government. Recovery of the entire assessed amount which is very huge, the day to day functioning of the establishment has been affected. He thereby submitted that for compliance of the mandatory provisions of section 70 of the act, the appellant may be directed to deposit a minimum amount and the EPFO may be directed to refund the balance of the recovered amount which is not likely to be transferred to the account of the workers not identified and not working with the appellant at present. A further prayer has been made to direct the EPFO not to transfer the amount to the account of the beneficiaries before a decision on merit is taken in this appeal.

The Ld. Counsel for the respondent took serious objection and submitted that in the summon for 7A inquiry served on the appellant, it was specifically mentioned that the inquiry is proposed against the identified employees. Moreover the calculation sheet was supplied to the appellant alongwith the summon. He also submitted that proper and adequate opportunity was granted to the establishment to raise

dispute if any on the calculation. Thus, it is a misconception of fact that the impugned order was passed basing on the report of the squad only. He thereby submitted that this is not a case for waiver of the pre condition more so when the entire assessed amount has already been recovered.

Considering the submission advanced by the counsel for both the parties it is now to be decided if this is a fit case for waiver of the pre condition prescribed u/s 70 of the EPF and MP Act. Admittedly the entire assessed amount has already been recovered. Without making a roving inquiry at this stage it is felt proper to observe that the Hon'ble Supreme Court in the case of **M/s Pawan Hans limited vs. Aviation Karmachari Sangathan and others reported in 2020 LLR 289(SC)** have held that the assessment under section 7A should be made in respect of available employees only and not in the respect of the employees who have retired or left the service. This Principle decided by the Hon'ble Apex Court speaks on the legality of the order challenged in this appeal. At the same time it need to be considered that the period of default in respect of which the impugned order has been passed is from 07/2008 to 11/2019 which is a pretty long period and the amount assessed and recovered is Rs. 1,36,71,747/-. Without going to the other details pointed out by the appellant while challenging the order as an arbitrarily order, it is felt proper to extend the protection to the appellant pending disposal of the appeal keeping in mind the Principle of law laid down by the Hon'ble Supreme Court in the case of **Mulchand Yadav and another vs. Raja Buland Sugar Company and Another reported in (1982)3SCC 484** wherein it has been held that the judicial approach requires that during the pendency of the appeal the order having serious civil consequence must be suspended.

Thus, on hearing the argument advanced it is felt desirable that pending disposal of the appeal the amount assessed should be protected from recovery as the appellant has challenged the identity and existence of the beneficiaries. Since, the respondent has already recovered the entire amount it is directed that the appellant shall deposit 50% of the assessed amount towards compliance of the mandatory provision of section 70 of the Act. Since, the respondent has already recovered the entire amount it is further directed that respondent shall prepare a FDR of 50% of the recovered amount i.e. Rs. 1,36,71,747/- with provision of auto renewal in the name of the registrar of CGIT and submit the same in the tribunal within 4 weeks from the said order and refund the balance 50% of the recovered amount to the appellant within the said period of 4 weeks from the

date of the order. This refund is interim and subject to the result of the final decision to be taken in the appeal. Call the matter on 06.12.2021 for compliance of the direction.

Presiding Officer