

(2018) 09 CHH CK 0122

Chhattisgarh High Court

Case No: W.P.L. NO. 173 Of 2018

Church Of Christ Mission in India

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision: Sept. 7, 2018

Acts Referred:

- Employees Provident Fund And Miscellaneous Provision Act, 1952 - Section 7A, 7B, 7B(5), 7I
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Malay Shrivastava, Vaibhav P. Shukla, B. Gopa Kumar

Final Decision: Dismissed

Judgement

P. Sam Koshy, J

1. Challenge in the present writ petition is to the order dated 26.7.2018, Annexure P-1, whereby the respondent - EPF department has rejected the application of the petitioner under Section 7B of the Employees Provident Fund and Miscellaneous Provision Act, 1952 (hereinafter referred to as, ""the Act of 1952"").

2. The fact in nutshell are that the respondent - EPF department conducted an enquiry against the petitioner under the provisions of Section 7A of the Act of 1952. After the conclusion of the enquiry, the matter stood finalized vide order dated 21.5.2018 when a final order under Section 7A has been passed to the petitioner. Against the said order the petitioner preferred a review petition under Section 7B of the Act of 1952 on 14.6.2018. The said

review petition has been rejected vide the impugned order, Annexure P-1, under challenge in the present writ petition.

3. Perusal of the impugned order would reveal that the review petition has been rejected on two counts; firstly, the review petition being filed at a belated stage beyond the prescribed period of limitation. Further, the review application also was not entertained on the ground of the same not filed in the format as prescribed under the law.

4. At this juncture, it would be relevant to refer the provisions of Section 7-I of the Act of 1952, which for ready reference is reproduced herein under:

7-I. Appeals to Tribunal.-
(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-Section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

5. Contention of the counsel for the petitioner is that against the rejection of an order of review, an appeal is not maintainable. Moreover, the review petition has not been rejected on merits but has been rejected on technicalities and therefore the only remedy available to the petitioner is, by approaching this Court under Article 226 of the Constitution of India.

6. At this juncture, it would also be relevant to quote sub-section 5 of Section 7B of the Act of 1952, which is being reproduced as under:

7B. Review of orders passed under Section 7A.-

(1) Any person aggrieved by a notification issued by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed

under review as if the order passed under review were the original order passed by him under section 7A.

7. The plain reading of the aforesaid provisions also would clearly reflect that the authorities may not have a right or preferring an appeal exclusively

against the order passed in a review petition but an appeal under this Act would also lie after the disposal of the review petition challenging the original

order which was put to review.

8. Given the aforesaid statutory provisions, this Court is of the opinion that the petitioner has an alternative efficacious statutory remedy available and

the fact that there is a statutory provisions of appeal available to the petitioner, it would not be proper at this juncture for the High Court to substitute

itself as an appellate authority bypassing the statutory provisions of appeal provided under the law. The writ petition therefore deserves to be and is

accordingly dismissed on the ground of having alternative remedy.

9. Needless to mention that the reluctance of this Court in not entertaining the writ petition would not preclude the petitioner if they so chooses to

prefer an appeal against the impugned order raising all those grounds inclusive those in the present writ petition and also in the review petition.

10. The writ petition stands dismissed accordingly.