

Executive Engineer (Electrical) Vs Regional Provident Fund Commissioner

Court: Orissa High Court

Date of Decision: Dec. 13, 2012

Acts Referred: Constitution of India, 1950 " Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 " Section 1, 14B, 3, 7A, 7B

Citation: (2013) 138 FLR 523 : (2013) LLR 250

Hon'ble Judges: S.K. Mishra, J

Bench: Single Bench

Advocate: Banoja Kr. Pattanaik, Mr. Rajjeet Roy, for the Appellant; S.K. Dash, B.C. Pradhan, S.P. Mohanty, for the Respondent

Judgement

S.K. Mishra, J.

Heard Mr. B.K. Pattanaik, learned counsel for the petitioner, and Mr. S.K. Dash, learned counsel for the R.P.F.

Commissioner. The petitioner is aggrieved by the order passed in P.O. Case No. 164/2003-2004 demanding damages of Rs. 84,297 u/s 146 of

the Employees" Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter referred to as the "E.P.F. Act".

2. At the outset, the attention of the Court was drawn to the provisions of section 7-I of the EPF Act, which provides for appeals to Tribunal.

Sub-section (1) of section 7-I, it is provided that any person aggrieved by any notification of the Central Government, or 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 the Tribunal against such notification or order.

3. In the said view of the matter, the order impugned in this case is appealable Attention was drawn to the Court order passed by a Division Bench

of this Court in the case of Governing Body Vyasagar (Auto) College, Jaipur Road v. Regional Provident Fund Commissioner, Bhubaneswar,

(W.A. No. 368 of 2011), wherein a Division Bench of this Court while examining the question of availing alternative remedy, relied on a

Constitution Bench decision of the Honb"le Supreme Court in the case of K.S. Rashid and Son Vs. The Income Tax Investigation Commission

etc., and held that the article 226 of the Constitution confers on the High Court a very wide power of the matter of writ petition. However, the

remedy of writ is absolutely discretionary remedy and High Court has the discretion to refuse to grant any writ if it is satisfied the aggrieved party

can have a suitable relief elsewhere. Further, in the case of Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, , the

Hon"ble Supreme Court has held that while dealing with similar issue writ petition should not be entertained unless the party exhausted the

alternative/statutory efficacious remedy. In that view of the matter, the writ petition is disposed of giving liberty to the petitioner to file an appeal to

the Tribunal within 30 (thirty) days from today raising all such grievances/arguments raised in this writ petition. On such an event, the learned

Appeal. Tribunal, shall hear and dispose of the appeal, as expeditiously as possible, preferably within a period of two months from the date of filing

of the appeal. Till the final order is passed, if any, no coercive action shall be taken against the petitioner in pursuance of Annexure-3.

Urgent certified copy of this order be granted as per rules.