

MANU/MH/1758/2011

Equivalent Citation: [2011(131)FLR1093], (2012)IILLJ425Bom

IN THE HIGH COURT OF BOMBAY

O.O.C.J. Writ Petition No. 1012 of 2011

Decided On: 02.09.2011

Appellants: **American Express Bakery**
Vs.

Respondent: **Regional Provident Fund Commissioner**

Hon'ble Judges/Coram:

S.C. Dharmadhikari, J.

Counsels:

For Appellant/Petitioner/Plaintiff: C.R. Naidu

For Respondents/Defendant: Mrs. S.V. Bharucha

JUDGMENT

S.C. Dharmadhikari, J.

1. Heard. The petitioner is aggrieved and dissatisfied with the order passed under section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 dated 23rd March, 2011 and a rejection of the review application on 9th May, 2011.

Mr. Naidu appearing on behalf of the petitioner submits that the order communicated to the petitioner and a copy of which is at page 70 of the petition paper book (Annexure K), states that the review application seeking review of the order passed under section 7-A of the said Act, is not in the prescribed form and, therefore, it cannot be considered and is rejected.

2. Mr. Naidu has invited my attention to the memo of the review application which is at page 49 of the petition paper book (Annexure I) and he submits that it is quite elaborate, containing the grounds seeking review and proper explanations therefore. It is also in the form of petition setting out the facts para-wise. In such circumstances and when it is accompanied with the necessary documents, the rejection thereof only for alleged non compliance with certain forms prescribed by the scheme is improper and incorrect. He submits that the review application mentions elaborate grounds to seek review of the order dated 23rd March, 2011 and particularly when it denies certain adjustments. It is also vitiated by certain arrears which are highlighted in the application.

3. In such circumstances, this is not an order against which any appeal could have been preferred before the Appellate Tribunal. For all these reasons, the petition should be entertained despite the objection to its maintainability raised by the department.

4. Mrs. Bharucha appearing on behalf of the respondent on the other hand submits that the order passed under section 7-A of the said Act dated 23rd March 2011 merges with the order made on the review application and, therefore, the appeal is

competent. Even if the reasoning is that the review application is rejected because the application in that behalf is not in the prescribed format, that amounts to rejection of the review application and applying the doctrine of merger, the appeal could have been filed. In any event there are disputed questions of facts, therefore, writ petition should not be entertained.

5. After hearing both sides, in my view, the objection to the maintainability on the ground of merger need not be considered in the facts and circumstances of this case. The rejection of the review application by a communication dated 9th March, 2011 is vitiated because the review application is rejected without it being considered on merits. The review application is rejected only because it does not comply with certain format or procedure prescribed by the department. This is not a satisfactory manner in which review application is dealt with. If as a result of the inquiry under section 7-A of the said Act, the assessment is made and the contribution has to be forwarded and if not forwarded by the establishment, recovered by resorting to coercive measures for the benefit of the workman employee, then, the department will be well advised in not wasting time over procedural and administrative matters. The delay works to the detriment of the ultimate beneficiary for whom the enactment must be implemented. In these circumstances, such hyper-technical approach defeats the purpose of the Act itself. For all these reasons, the order dated 9th May, 2011 is quashed and set aside. The review application stands restored to the file of the authorities and it shall now be dealt with by the Regional Provident Fund Commissioner of the concerned region. The petitioner shall appear either in person or through his representative before the Regional Provident Fund Commissioner, Mumbai on 14th September, 2011 at 11.00 a.m. and the Commissioner shall hear the petitioner and after perusing the memo of the review application and considering the oral arguments so also scrutinizing the documents produced, shall pass a reasoned order as expeditiously as possible and within period of four weeks from the conclusion of hearing. All contentions in relation to the assessment, including on the point of adjustment are kept open. Petition disposed off in these terms. No costs.

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