कर्मचारी भविष्य निधि संगठन
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)
EMPLOYEES' PROVIDENT FUND ORGANISATION
(Ministry of Labour & Employment, Govt. of India)
मुख्य कार्यालय / Head Office
भविष्य निधि भवन, 14-भीकाजी कामा प्लेस, नई दिल्ली-110 066
Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi – 110 066.

No. LC – 4(5)2017/PB/HC/6800 Date: 03 JUL 2017

To

All Regional P.F. Commisioners – I &II
In-charge of Regional Offices

Sub: Forwarding of important Judgement by Hon'ble High Court Chandigarh in CWP(C) No. 5201/2000 in the matter of RPFC V/s Budhewal Cooperative Sugar Mills. – regarding.

Sir,

Please find enclosed herewith a copy of the Judgement dated 20-04-2017 passed by the Hon'ble High Court of Chandigarh in CWP No. 5201/2000 in the matter of RPFC. V/s M/s Budhewal Cooperative Sugar Mills.

In the instant matter, Hon'ble High Court, Chandigarh held that "there is no inherent power in the authorities or the Tribunal to condone delay in presenting an appeal against an order passed under section 14B of EPF& MP Act, 1952". Further, the Hon'ble Court has held that "the EPF & MP Act being special welfare legislation designed to protect the interest of marginalized workmen, the provisions of Limitation Act cannot be made applicable in the absence of any legislative intent. Furthermore, the Assessing Authorityand the Tribunal are not Courts of law and therefore, the provisions of Section 14 of Limitation Act are not applicable to them".

A copy of the order is being circulated for information and implementation of this part of the order.

Yours faithfully,

Encl: As above

23/6/17

(Gyanendra Kumar)
Assistant P. F. Commissioner (Legal)

Copy to:
1. All ACCs –I&II (Zones).
2. FA & CAO/CVO/All ACCs HQ.
3. Director , NATRSS/ All Zonal Training Institutes.
4. Director (Audit)/ All Dy. Directors (Audit) .
5. Dy Directores (Vig.)
6. Hindi Cell for Hindi Translation.

Sl No 15 (R)

कर्मचारी भविष्य निधि संगठन
(श्रम मंत्रालय, भारत सरकार)
क्षेत्रीय कार्यालय, भविष्य निधि भवन,
शाम नगर, लुधियाना - 141001
फोन :- 0161-2440559, 5058559,
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EMPLOYEES' PROVIDENT FUND ORGANISATION
(Ministry of Labour, Govt of India)
Regional Office Bhavishya Nidhi Bhavan,
Sham Nagar, Ludhiana-141001
Ph.-0161-2440559, 5058559,
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No.R.O. Ldh/ Legal Cell/CWP/1289/2013 \ 2a7 Dated: 05.05.2017

To

The Central Provident Fund commissioner
Employees Provident Fund Organisation,
Head Office, Bhavishya NidhiBhawan,
14, Bhika Ji Cama Palace,
New Delhi, 110 066

{By Name to :- Shri Samarendra Kumar, RPFC-I (Legal)}

Sub: Fowarding of important Judgment by Hon'ble High Court, Chandigarh in CWP No. 5201/2000 in the matter of RPFC Vs. M/s Budhewal Cooperative Sugar Mills –regarding.

Sir,

Please find enclosed herewith copy of judgment dated 20.04.2017 delivered by Hon'ble High Court, Chandigarh in CWP No. 5201/2000 in the matter of RPFC Vs. Budhewal Cooperative Sugar Mills. The above is forwarded for information please.

In the instant matter, Hon'ble High Court, Chandigarh held that "*....threre is no inherent power in the authorities or the Tribunal to condone delay in presenting an appeal against an order passed under section 14B of EPF & MP Act, 1952*". Further, the Hon'ble Court has held that "*the EPF & MP Act being Special Welfare Lagislation designed to protect the interest of marginalized workmen, the provisions of Limitation Act cannot be made applicable in the absence of any legislative intent. Furthermore, the Assessing Authority and the Tribunal are not Courts of law and therefore, the provisions of Section 14 of Limitation Act are not applicable to them*".

A copy of above said order dated 20.04.2017 is forwarded herewith for information and necessary action as deemed fit.

Yours faithfully,

(A.K. Singh)
Regional P.F. Commissioner-I

Encl : As above.

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 20.04.2017

CWP No.5201 of 2000 (O&M)

Regional Provident Fund Commissioner, Ludhiana

...Petitioner

Vs.

Employees Provident Fund Appellate Tribunal, New Delhi & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajesh Hooda, Advocate, for the petitioner.

Mr. Rahul Sharma, Advocate, for respondent No.2

RAJIV NARAIN RAINA, J.

This petition has been filed by the Regional Provident Fund Commissioner, Ludhiana against two orders passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi (hereinafter to be referred as 'the Tribunal').

The first one is dated 21.05.1999 overruling the objection of the petitioning – Organisation that Section 14(2) of the Limitation Act, 1963 (hereinafter to be referred as 'the Limitation Act') is not applicable in a proceeding before the Tribunal, therefore, the period spent in any proceeding before any other authority in the Organisation is not to be excluded for the purpose of treating the appeal within the time allowed by statute. The Tribunal has held that benefit of Section 14(2) of the Limitation Act is available to the establishment. The Organisation is unhappy with the judgment and is assailing the order as bad in this petition praying that it be quashed.

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The signature tune in the judgment of the Supreme Court delivered in case The Commissioner of Sales Tax, UP, Lucknow Vs. Prason Tools & Plants, Kanpur, (1975) 4 SCC 22 has been distinguished by the Tribunal for the reason that the Legislature has not excluded or curtailed the power of condoning the delay by the Tribunal for any length of time, the limitation of 60 days has been inhibited by the rule making authority but there is no provision outlawing reception of appeal in the principal Act beyond a certain time. Any law made by a rule making authority cannot supersede the provision of law made by the Legislature. Thus, the Tribunal has inferred wrongly that the Legislature has not excluded the power of this Tribunal from considering the provisions of Section 5 to Section 14 of the Limitation Act, 1963.

The Tribunal has also distinguished the law in Nityanand M. Joshi & another Vs. LIC, AIR 1970 SC 209, wherein the Supreme Court observed that in view of Sections 4 & 5 of the Limitation Act, it would be clear that a scheme of the Act is that which only deals with applications to Court and the labour court is not a court within the meaning of the Limitation Act. Therefore, an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the Act') cannot be held as barred by Article 132 of the Limitation Act insofar as the claim was for period beyond 3 years. This ruling has been discarded for the reason that it does not apply to the labour courts to entertain remedy despite lapse of time.

Next was cited a judgment of the Calcutta High Court in Minor Subir Rajan Mandal Vs. Sita Nath Mukherjee, AIR 1994 Calcutta 166. Here the Calcutta High Court held that Section 5 of the Limitation Act was expressly excluded, while the case in hand concerned exclusion of

provisions of Section 14(2) of the Limitation Act. There was another judgment cited by the Organisation before the Tribunal, namely, Officer on Special Duty (Land Acquisition) & another Vs. Shah Manilal Chandulal & others, (1996) 9 SCC 414. In this case, Their Lordships of the Supreme Court considered a matter to answer the question whether the Collector/Land Acquisition Officer while make a reference under Section 18(1) acts as a statutory authority and answered that proposition holding that it was not a Court for the purpose of Section 5 of the Limitation Act. Section 29(2) of the Limitation Act cannot be applied to the proviso to Section 18(2) of the Land Acquisition Act, 1894, whereas the Tribunal was treated as a court for all purposes. The Tribunal had observed that even in the procedural rules, the Central Government has prescribed that an order shall be pronounced in Court. If the Tribunal is a Court, then the Limitation Act applies and the exemptions therein will follow suit despite expiry of the period of limitation prescribed to do acts and things necessary to maintain a lis.

The Tribunal further reasoned that Section 29(2) of the Limitation Act makes the provision of Limitation Act applicable in cases of special or local laws to the extent not modified by those Acts. Section 5 of the Limitation Act confers power to condone the delay, wheras provision of Section 14(2) of the Limitation Act defines the 'prescribed period' and for that it provides that any time taken in prosecuting some other remedy bona fide in some other forum without jurisdiction shall be excluded for computing the prescribed period and therefore, the scope of Sections 5 & 14(2) of the Limitation Act are quite different for their stated purposes and cannot be confused with each other. Ultimately, the Tribunal held in the impugned order, at the interlocutory stage, as follows:

> "3. ...Even though on the strength of clear provisions made in the rule if it be held that these rules have power to over-

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rule the provisions of Section 5 of the Limitation Act, then it only restricts the power of Tribunal to condone a delay beyond 60 days, but for arriving at whether the prescribed period has elapsed or not, it cannot debar the Tribunal from considering the provisions of Section 14(2) of the Limitation Act. Therefore, the contention of the respondent that provision of Section 14(2) of the Limitation Act cannot be invoked is without merit and is rejected."

Accordingly, appeals were found to be within time and were admitted for regular hearing. A priori, notices were issued to the respondents to file counter affidavits etc.

The second order has been passed by the Tribunal on 19.07.1999 on the merits of the case and the appeal of Budhewal Cooperative Sugar Mills Ltd., Ludhiana has been allowed and the case remanded for re-assessment of penalty. It is against these two orders that the EPF Organization has approached this Court.

The few facts relevant for the decision in the matter are that the petitioner issued notice dated 24.04.1996 to respondent No.2 – establishment to show cause as to why damages under Section 14-B of the EPF & MP Act should not be levied for the delay in deposit of provident fund dues. Respondent No.2 was heard on the notice and an order was made on 11.11.1997 levying damages to the tune of ₹3,16,839/- under Section 14-B of the Act.

On 24.02.1999, the establishment wrote to the Commissioner for review of the order passed under Section 14-B without there being any enabling provision in the Act for review of the order. On 30.07.1998, the petitioner – organization intimated the establishment about the non-maintainability of the review petition. On 26.09.1998, the respondent – establishment preferred an appeal against the order dated 11.11.1997 and the

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letter dated 03.07.1998 alongwith an application for condonation of delay in filing the appeal. Accordingly, the appeal was delayed by 322 days from the date of issue of order under Section 14-B i.e. from 11.11.1997. In terms of the provisions of Rule 7 of the Rules, the appeal against the order under Section 14-B could be filed within 60 days from the date of issue of order and the Commissioner was empowered to condone the delay to the extent of 60 days in filing the appeal and not beyond that. This delay has been condoned and the appeal heard on merits. Against that dispensation the Organization is before the Court for setting aside the order as without jurisdiction.

Before this Court, it is the contention of Mr. Rajesh Hooda that an order under section 14-B was passed on 11.11.1997. Respondent No.2 instead of filing statutory appeal, filed a simple representation before the same authority on 06.01.1998 for review of the order dated 11.11.1997. The application remained pending with the authority and the same was rejected by the Assessing Authority on 30.07.1998 on the ground that under the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter to be referred as 'the EPF & MP Act'), there is no provision for review of order passed under Section 14-B. The Organization was under no legal obligation to decide the request. Thereafter, an appeal was filed on 28.09.1998 in standard form. So there was delay of 322 days in filing the appeal occurring from 11.11.1997 to 28.09.1998 for which there was no sufficient explanation in legal language. As per Rule 7 of the EPFAT (Procedure) Rules, 1997, the appeal can be filed within 60 days and the EPFAT has the power to further condone the delay of 60 days if sufficient cause is shown. Accordingly the maximum delay which can be condoned is 120 days and no more.

Mr. Hooda contends that respondent No.2 is seeking benefit of section 14(2) of the Limitation Act. But section 14(2) of the Limitation Act applies to the Courts and not to authorities and Tribunals as per the judgment of Supreme Court in case of *M/s Parson Tools & Plants case (supra)*. In that case decided by a Coram of three Hon'ble Judges, the question before the Supreme Court was: 'Whether section 14(2) of Limitation Act can be invoked for excluding the time spent on prosecuting an application under Rule 68(6) of U.P. Sales Tax Act?' There is provision under Section 10(3B) of that Act which is identical to Rule 7(2) of EPFAT Rules. The Supreme Court held (in para.6) that Section 14 of Limitation Act applies to Courts and not to Tribunals and Administrative Authorities. It was further held (in paras.17 & 18) that if the legislature in a special statute prescribes a certain period of limitation and also prescribes that such period on sufficient cause being shown, may be extended, the maximum only up to a specified time and no further, then the Tribunal concerned has no jurisdiction to condone the delay and Section 14(2) of the Limitation Act also cannot be applied.

The present case, Mr. Rajesh Hooda asserts is squarely covered by the judgment passed by the Division Bench of Delhi High Court under the EPF & MP Act itself, in case of APFC Vs. EPFAT, 2006 (2) LLJ 388. The Delhi High Court after relying upon the judgment in case of *Parson Tools & Plants* case (supra) and various other judgments of the Supreme Court held that under the provisions of EPF &MP Act, the provisions of Section 5 of Limitation Act are excluded and hence the provision of that Act cannot be called in aid to supplement the provisions of the Act. It was further held that the Legislature was aware about the provisions of Limitation Act, yet with intent to curb the delay in labour matters, legislature left it to the rule making authority to make a provision for limitation. Thus,

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the applicability of Section 5 of Limitation act is specifically excluded. EPF & MP Act is a special statute and has provided special period of limitation as also extended period and must receive a liberal and broader construction. Therefore, as per this judgment, if the provisions of Section 5 of Limitation act are excluded then it follows the provisions of Section 14(2) also stand excluded.

Furthermore, in case of Saint Soldier Modern Sr. Sec. School Vs. RPFC, 2014 (18) SCT 609, another Division Bench of the Delhi High Court held that EPF &MP Act being a special Act, specifically prescribing a period of limitation for filing appeal within 60 days and empowering the Tribunal to condone further delay of 60 days alone and no more on showing sufficient reasons, therefore, the Tribunal has no jurisdiction to condone the delay beyond the extended period of 60 days. The Court after relying upon the judgment in *Parson Tools & Plants (supra)* further held that when Section 5 of Limitation Act itself was not applicable to condone the delay, the power to condone delay because of pursuing a remedy elsewhere on a principle akin to Section 14(2) of the Limitation Act, would also not be available. It was also held that in view of provisions of Section 29(2) of Limitation Act itself, the applicability of Section 4 to 24 of Limitation Act is excluded. To this I might add that beyond the last date of reception of appeal the Tribunal becomes *funtus officio* just like the labour court becomes after expiration of thirty days of publication of award since the both the Acts are in the same genre.

He also referred to my judgment in Evergreen Sr. Sec. School Vs. Presiding Officer, EPFAT & others, 2015(4) SCT 57: 2015 2 LLJ 689, wherein I held that in view of the provisions of Rule 7 of EPFAT Rules, the

Tribunal has no power to condone the delay beyond 120 days. In para.6 it was observed:

> "6. I would accept the reasoning of the learned counsel for the Organisation as one which is consistent with Rule 7. Even though Rule 7 is placed in the procedural part of the scheme framed under the Act but it would in my opinion be read as a substantive provision suffering procedural limitations prescribed within the rule with no further latitude or discretion except within the period prescribed in the second leg of the prescribed time. It is well settled that where the result of expiry of limitation beyond the last date fixed is not prescribed then a construction needs to be placed which is strict and here no equity would come into play when limitations to do acts or things have expired, for example, just as in civil suits; in proceedings under Section 34 of the Arbitration & Conciliation Act, 1996 and limitations placed in the erstwhile Punjab General Sales Tax Act, 1948 to STCs etc."

In Hindustan Times Ltd. Vs. UOI & others, (1998) 2 SCC 242, there was delay of 14 years in initiating the proceedings u/s 14B of the EPF & MP Act, 1952. It was contended that the same is barred by limitation in view of the Limitation Act. The Supreme Court held that the provisions of Limitation Act do not apply to Section 14B of EPF & MP Act, because despite many amendments since 1952 in the EPF Act, the legislature did not prescribe any period of limitation. Therefore, the legislature intentionally did not provide the period of limitation and hence the provisions of Limitation Act cannot be made applicable.

In Prakash H. Jain Vs. Marie Fernandes, (2003) 8 SCC 431, the Supreme Court dealt with the Maharashtra Rent Control Act, 1999 in which also there is no provision empowering the competent authority to condone the delay in filing an application for leave to defend the eviction

proceedings. The dicta laid down in paras.10, 12 & 13 is relevant to this case and is extracted as follows:

> "10. ...Questions of the nature raised before us have to be considered not only on the nature and character of the authority, whether it is court or not but also on the nature of powers conferred on such authority or court, the scheme underlying the provisions of the Act concerned and the nature of powers, the extent thereof or the limitations, if any, contained therein with particular reference to the intention of the legislature as well, found expressed therein. There is no such thing as any inherent power of court to condone delay in filing proceedings before a court/authority concerned, unless the law warrants and permits it, since it has a tendency to alter the rights accrued to one or the other party under the statute concerned..
>
> 12. ...It is unnecessary to once again refer to the special procedure provided for in Chapter VIII, but the various provisions under Chapter VIII unmistakably indicate that the competent authority constituted thereunder is not "court" and the mere fact that such authority is deemed to be court only for limited and specific purposes, cannot make it a court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to proceedings before such competent authority or clothe such authority with any power to be exercised under the Limitation Act...
>
> 13. The competent authority constituted under and for the purposes of the provisions contained in Chapter VIII of the Act is merely and at best a statutory authority created for a definite purpose and to exercise, no doubt, powers in a quasi-judicial manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers and the same could be exercised in the manner provided there for and subject to such conditions and limitations stipulated by the very provision of law under which the competent authority itself has been created.."

On the other hand, the contentions of Mr. Rahul Sharma, learned counsel appearing for respondent No.2-establishment are noticed while he contends that the benefit of Section 14 of the Limitation Act deserves to be given to his client. The facts are not disputed and, therefore, they are not reiterated since the question lies in a narrow compass regarding delay in filing appeals.

Order 29 Rule 2 of the Code of Civil Procedure, 1908 on which Mr. Sharma builds his monument deserves to be reproduced. The same reads as follows:

> **"Order 29 Suits by or against Corporation**
>
> 2. Service on corporation – Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served –
>
> (a) on the secretary, on or any director, or other principal officer of the corporation, or
>
> (b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business."

Mr. Sharma would first refer to the judgment of the Bombay High Court in Yeshwant Sahakari Kamgar Bank Vs. Assistant Provident Fund Commissioner, 2007(3) Mah. LJ 334 to lace his argument with varnish. In this case, the bank's appeal was rejected on the ground of limitation by the Tribunal, which refused to condone the delay. The Single Judge of the Bombay High Court was of the view that Rule 7 of the Provident Funds Appellate Tribunal (Procedure) Rules, 1997 enacted in exercise of powers conferred by Section 29(2) of the EPF & MP Act is to be construed as a special law of limitation in relation to appeals filed under the Act in view of the provisions of Section 29(2) of the Limitation Act and therefore, the provisions of Section 14 of the Limitation Act would apply to

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the cases arising under the said Act also. In this case, the establishment had approached the civil court, but the civil court returned the plaint on the ground of absence of jurisdiction to entertain the plaint. The plaint was returned on 30.06.2003 and the appeal was filed on 15.07.2003. The High Court held that the Tribunal out to have considered the period spent from 09.09.2002 till 30.06.2003 as liable to be excluded for the purpose of calculating the period of limitation and if the period is excluded, there would still be a delay, but of only 3 days. The High Court condoned the delay of 3 days and directed the Tribunal to decide on merits.

Mr. Sharma reads Paras 6 to 9 & 14 of this ruling in his favour. The same are as follows:

> "6. Section 14 (2) of the Limitation Act, 1963 provides that in computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. Section 29 (2) of the Limitation Act provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.
>
> 7. Rule 7 (2) of the said Rules provides that any person aggrieved by an order passed by any Authority under the Act, may within 60 days from the date of issuance of the order, prefer an appeal to the Tribunal, provided that the Tribunal

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may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.

8. In view of the fact that Rule 7 of the said Rules prescribes the specific period for filing of an appeal under the said Act, which is different from the provisions comprised in the Schedule to the Limitation Act regarding the period of filing of the appeals, the learned Advocate for the petitioner is justified in contending that it is a special law in relation to the period of limitation prescribed for the appeals to be filed under the said Act. The Apex Court in Kaushalya Rani's case (supra) had clearly held:-

> "A 'special law' means a law enacted for special case, in special circumstances, in contradistinction to the general rules of the law laid down, as applicable generally to all cases with which procedure for the trial of criminal cases, generally; but if it lays down any bar of time in respect of special cases in special circumstances like those contemplated by S. 417 (3) and (4) read together it will be a special law contained within the general law laying down the general rules of limitation applicable to all cases dealt with by the Act."

9. The Limitation Act is a general law laying general rules applicable to all the cases dealt with under the Limitation Act. But there may be instances of a special law of limitation laid down in other statutes, though such statutes may not be dealing with the law of limitation. Considering the same, therefore, the provision of law under Rule 7 of the said Rules which have been enacted in exercise of powers conferred under Section 21(1) of the said Act, is to be construed as a special law of limitation in relation to the appeals filed under the said Act. Obviously, therefore, considering the provisions of Section 29 (2) of the Limitation Act, the provisions of Section 14 of the Limitation Act would apply to the cases arising under the said Act also.

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> 14. It is sought to be contended on behalf of the respondent no.1 that the Tribunal is not empowered to condone the delay so spent in view of the provisions comprised under Rule 7(2) of the said Rules. As already seen above, once it is clear that the provisions of Section 29 of the Limitation Act are applicable to such proceedings before the Tribunal under the said Act and Rules, the contention sought to be raised on behalf of the respondent about absence of jurisdiction to the Tribunal to condone such delay by applying the provisions of Section 14 of the Limitation Act, cannot be accepted. In fact, Section 14 is not in relation to condonation of delay, but it provides exclusion of period on the ground of limitation. Section 14 of the Limitation Act specifically provides for exclusion of the period spent in proceeding bonafide in a court without jurisdiction..."

The only case law noticed by the Single Bench in this case was a decision in Sitaram Nanasa & others Vs. Chunnilalsa Bhagchandsa Kalal, AIR (31), 1944 Nagpur 155. In this case, the Court has held that Section 14(2) of the Limitation Act will apply in view of provisions of Rule 7(2) of the EPFAT Rules. However, on facts this judgment is not applicable to the facts of the present case. In that case, the petitioner had filed civil suit in the civil court, whereas in the present case, an application was filed before the Assessing Authority, which is not a Court. Therefore, in view of *Parson Tools & Plants case (supra)*, wherein the Supreme Court held that Section 14 of Limitation Act applies to Courts and not to Tribunals and Administrative Authorities, the judgment of single Judge of Bombay High Court is not applicable and is seriously open to doubt. The judgment in *Parson Tools & Plants case* was not noticed and considered by the Bombay High Court and, therefore, the same is distinguishable.

Learned counsel then places reliance on judgment in Rameshwar Jute Mills Vs. Union of India & others, 1999 SCC (L&S) 1231.

In this case, a writ petition was filed in 1992 challenging an order dated 29.09.1989 made by the Regional Provident Fund Commissioner under Section 7-A of the EPF & MP Act on the ground of delay for which there was no cogent explanation. Accordingly, the appellant's case on merits had not been touched by the High Court. The Jute Mills had promptly filed a review application against the order dated 29.09.1989 purporting to be under Section 7-B of the Act, introduced by the amending Act of 1988. However, the notification required for bringing into force this amendment inserting Section 7-B in the principal Act as mainstay provision had not been issued with the result that both sides discovered much later that there was no power of review available under the Act till Section 7-B was brought into force. The Jute Mills argued before the Supreme Court that this legislative history of the Act is by itself sufficient to explain the intervening period which had been treated by the High Court as unexplained delay. This submission was accepted. The Supreme Court held in the authority observing that the impression not only of the Mills, but also of the authorities concerned for a long time was that the power of review was available and it is for this reason that the review petition came to be dismissed on this ground after a considerable period. The period of pendency of the review petition should not, therefore, have been treated as period of delay, even if any specific period of limitation was prescribed for filing the writ petition much less for being treated as a ground to dismiss the petition for laches. It was, in these circumstances, that the judgment of the High Court was set aside with a direction to decide the case afresh on merits after hearing both sides.

Section 7-B of the EPF & MP Act provides remedy of review on orders passed under Section 7-A of the Act. The provision reads as follows:

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"**7-B. Review of orders passed under Section 7A** - (1) Any person aggrieved by an order made under sub-section 1 of section 7A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order:

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.

(2) Every application for review under sub-section 1 shall be filed in such form and manner and within such time as may be specified in the Scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.

(4) Where the officer is of opinion that the application for review should be granted, be shall grant the same:

Provided that, -(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

(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."

Section 7-B was introduced by amending Act of 1988, but was notified into the law on 01.07.1997. That is what had led to the muddle up

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by both parties in the Provident Fund Organization neither knowing how to handle the impasse. The case does not involve Section 14-B of the Act against which there is no remedy provided except an appeal. Besides, Section 14(2) of the Limitation Act did not fall for consideration before the Supreme Court, when the case turned on its own fact and is, therefore, distinguishable.

Mr. Rahul Sharma extends his research to analogous law and cites a Division Bench judgment of this Court in Kulbir Kaur Vs. Union of India & others, 2014 (1) PLR 475; 2013 (15) RCR (Civil) 468 to urge that the appellate authority was correct in entertaining the appeal and holding that the delay deserves to be condoned and such power was vested in the Tribunal. Kulbir Kaur's case is a case arising out of Licensing of Tenements and Sites and Services in Chandigarh Scheme, 1979 (a scheme for allotment of low cost tenements on lease) and Hire Purchase Basis Scheme, 1979 to provide low cost housing. The Division Bench observed that every judicial and quasi judicial Tribunal had inherent powers to review its own orders, relying on the judgment of the Supreme Court in Shivdeo Singh & others Vs. State of Punjab & others, AIR 1963 SC 1909. The Bench held that in view of the ruling, the Tribunal has inherent power to review its own order.

The argument really is one that the authority that passed order under Section 14-B had the inherent power to review its own order in whatever form the request was made; called letter, review application etc. and there was no reason for the appellate authority to dismiss the application of the petitioner to review its own order. In *Kulbir Kaur's* case a resumption order was passed cancelling allotment of tenement. The petitioner and her husband had paid the entire premium and installments in time. The Estate Officer, UT, Chandigarh cancelled the allotment on the ground of certain

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building violations under Clauses 14 & 16 of the Chandigarh Allotment of Low Cost Tenements on Lease and Hire Purchase Basis Scheme, 1979. The appeal to the Chief Administrator, UT, Chandigarh was filed and was withdrawn with liberty to file a fresh one. While refilling the appeal, the petitioner filed an application for condoning the delay as time had run out by then. The appeal was dismissed only on point of limitation while observing that the petitioner had failed to explain the delay of 2 years in filing the appeal against which order aggrieved party approached this Court against the order of the Chief Administrator. A statement was made before the Court that the unauthorized construction existing in the house in dispute has been removed. By an interim order, the petitioner was given liberty to move review application before the Chief Administrator mentioning the fact of unauthorized construction being removed and the authority would be at liberty to dispose of the review application independent of the pendency of the writ petition. In the second round before the Chief Administrator, the application was dismissed on the ground that the authority had no power to review the order. It is in this background that the Division Bench relied on *Shivdeo Singh's case* to hold that every judicial or quasi judicial Tribunal has inherent power to review its own order.

It is the next contention of Mr. Sharma that so long as the order of the Tribunal has done substantial justice, then interference should not follow automatically and mechanically on a mere technicality of the law. He points out to my judgment in CWP No.1605 of 22012 titled 'Regional Provident Fund Commissioner Vs. Essen Deinki & another' decided on 17.09.2015 of an indication that there is sufficient room in Section 14-B of the EPF & MP Act and Para.32-A of the Employees' Provident Fund Scheme, 1952 to accommodate the remand order even though it may be a

little sketchy in nature. If it is sketchy then so is the order passed by the APFC. The Court did not interfere with the remand order and held that the matter would be thrashed out again even on the point of levy of 17% interest and as such a direction would remain inherent in remand proceedings and would be read in, since in remand the Tribunal cannot be understood as foreclosing as to the manner in which the case would be decided on any of the moot points in issue relegated, unless the remand directions dictate otherwise. He submits that the Letters Patent Appeal No.466 of 2016 has been dismissed on 04.04.2016, a case which was argued by Mr. Rajesh Hooda for the RPFC.

At the end of the arguments, Mr. Sharma relies on a judgment of the Division Bench of Madurai Bench of the Madras High Court in Kottar Chettu Nainar Desika Vinayagar Devaswom Trust rep. by its Trustee 2 to 5 & others Vs. Assistant Commissioner, H.R. and C.E., Department, Nagercoil, Vadiveeswaram Village, Agastheeswaram Taluk, Kanyakumari District & others, 2016 (2) MLJ 561. This case involves Section 5 of the Limitation Act. If an application for condoning delay in filing appeal is dismissed, rights of parties on merits decided by the trial Court, become final and conclusive without allowing appellate Court to decide on merits the correctness or otherwise of judgment and decree passed by the trial Court and its refusal to condone delay which would seriously affect parties whereas it is not so in case the delay is condoned. Section 5 no doubt shows that delay cannot be condoned mechanically merely because Government is seeking to condone such delay. There can hardly be any quarrel against the proposition decided in the case. Para.17 of the judgment referred by Mr. Sharma has to be noticed and the same reads as follows:

> "17. Thus, from the above decisions of the Apex Court, it is clear that once the appellate Court accepts the reasons stated

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as sufficient cause and condoned the delay by exercising its discretion, this Court normally should not disturb such finding, unless such exercise of discretion was on wholly untenable grounds or in an arbitrary or perverse manner. In fact, the role of the revisional or appellate Court is very limited, while considering such revision or appeal filed against the order condoning delay, since the lower judicial forum, based on the facts and circumstances of the case, has accepted the reasons, exercised its discretionary power and condoned the delay. Unless such order exhibits any perversity on the face of it, interference against that order is not at all warranted. After all, by condoning the delay, rights of the parties on the merits of the case are not finally decided or adjudicated upon. On the other hand, if the Court below refuses to condone the delay and such an order is challenged, certainly the role of the revisional or appellate Court is not limited to ascertain as to whether such order exhibits any perversity alone. On the other hand, such revisional or appellate Court has to necessarily go into the totality of facts and circumstances of the case and find out as to whether such refusal to condone the delay has resulted in miscarriage injustice. It is to be borne in mind that if an application for condoning the delay in filing the appeal is dismissed, rights of the parties on the merits decided by the trial Court become final and conclusive without allowing the appellate Court to decide on merits the correctness or otherwise of the Judgment and the Decree passed by the trial Court. Therefore, refusal to condone the delay would seriously affect the parties whereas it is not so in the case where the delay is condoned. Moreover, the appellate Court, undoubtedly, is also a fact finding Court. Therefore, it is all the more necessary for the appellate Court to go into the totality of the facts and circumstances of a particular case, while considering the application for condoning the delay, in order to find out as to whether certain facts or question of law decided by the trial Court are required to be considered on merits once again, so as to see that failure of justice, does not result in, merely on the technical ground of delay in filing the appeal. At this juncture, I would like to rely on a decision of the Apex Court

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reported in (2013)4 SCC 97 (Laxmibai vs. Bhagwantbuva), wherein the Apex Court has observed at paragraph 49 as follows:-

> "49.....When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the courts may in the larger interests of administration of justice may execute or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass orders will serve the interest of justice best."

Having heard learned counsel at substantial length and reflected and pondered on the two sides presented with the case law cited by Mr. Rajesh Hooda and Mr. Rahul Sharma, I am of the considered view that the submissions of Mr. Hooda deserve to prevail over the contentions of Mr. Rahul Sharma, learned counsel appearing on behalf of the respondent No.2 establishment.

Like the Industrial Tribunal, the Tribunal constituted under the EPF & MP Act is not a Court, but discharges functions akin to Courts. *See* - The Bharat Bank Ltd., Delhi Vs. The Employees of the Bharat Bank, 1950 (Supp.) SCT 317. At the same time there can be no manner of doubt that the Tribunal exercises quasi judicial authority. It is a creature of statute and must act within the law which constitutes it. There is sufficient indication in *Parson Tools & Plants; APFC Vs. EPFAT; Saint Soldier Modern Sr. Sec. School; Evergreen Sr. Sec. School* and *Hindustan Times* cases, relied upon by Mr. Hooda, to support the conclusion that there is no inherent power in the authorities or the Tribunal to condone delay in presenting an appeal against an order passed under Section 14-B of the EPF & MP Act. While the law in *Yeshwant Sahakari Kamgar Bank*, *Rameshwar Jute Mills* and

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other cases cited by Mr. Sharma are distinguishable on facts and to my mind do not answer the issue up for consideration.

Therefore, in view of the above judgments, the EPF & MP Act being Special Social Welfare Legislation designed to protect the interest of marginalized workmen, the provisions of the Limitation Act cannot be made applicable in the absence of any legislative intent. Furthermore, the Assessing Authority and the Tribunal are not Courts of law and therefore, the provisions of Section 14 of Limitation Act are not applicable to them.

Consequently, the petition is accepted and the impugned order dated 21.05.1999 is set aside. The natural consequence would be that the order dated 19.07.1999 stands invalidated. The question is answered accordingly. No costs.

.04.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*