

The Director Vs. the Regional Provident Fund Commissioner

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Court : Chennai

Decided On : Oct-14-2011

Judge : K.Chandru, J.

Acts : Employees' Provident Funds and Miscellaneous Provisions Act, 1952 - Sections 7(A), 7-Q, 14-B, 7-I; Foreign Exchange Management Act - Section 35

Appeal No. : W.P.(MD)No.8498 of 2011 and W.P.(MD)No.8499 of 2011

Appellant : The Director

Respondent : The Regional Provident Fund Commissioner

Judgement :

1. These two writ petitions were filed by the Director, Central Electrochemical Research Institute, Karaikudi (in Short CERI).

2. In the first writ petition challenge is to the order, dated 22.07.2011 passed under Section 7(A) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as the Act). By the impugned order, the petitioner's institute was directed to pay a sum of Rs.18,08,816.70/- towards the payment in favour of the employees engaged by M/s.Alagappapuram Labour Contract Cooperative Society, Karaikudi, the third respondent in W.P.(MD).No.8498 of 2011 for the period from 5/1989 to 2/1998, within 7 days, failing which they are liable to

be proceeded with execution proceedings and they also liable to pay damages under Section 14-B of the Act and interest under Section 7-Q of the Act.

3. In the second writ petition, the challenge is under order dated 22.07.2011. This also passed under Section 7-A of the Act in respect of similar payment for the employees engaged by M/s.Fast Security Services, the third respondent in W.P.(MD).No.8499 of 2011 for the period from 9/2000 to 11/2001.

4. Both the writ petitions were came up for admission on 01.08.2011, while ordering notice of motion, interim stay was granted for a limited period. Subsequently, the interim stay was extended from time to time.

5. It is seen from the records that there was an earlier round of litigation filed by the petitioner in W.P.(MD).Nos.9737 to 9739 of 2010 and the same were dismissed by this Court and thereafter, the petitioner preferred writ appeals before the Division Bench in W.A.Nos.833 to 835 of 2010. the Division Bench after relying upon another Division Bench order with reference to Scope of 7-A of the Act, allowed the appeals with a direction to the respondents to pass order afresh, within a period of three months. The Department was also directed to return the demand draft sent by the petitioner institute.

6. Subsequent to the remand order passed, notice was given by the department. The petitioner made submissions before the Commissioner. Further, the Regional Provident Fund Commissioner after examining, once again passed a detailed order and directed the petitioner institute to pay the amount.

7. Once again the petitioner is before this Court for the second time. It is stated that there is no other effective alternative remedy except invoking Article 226 of the Constitution of India.

8. This Court is unable to accept the said contention. The Act provides appeal remedy under Section 7-I of the Act. The said Tribunal is quasi judicial in nature and it can go into all the issues raised here. It is wrong to contend that there is no remedy under the Act.

9. When an Act provides for a statutory appeal remedy, it is not open to the petitioner institute to ignore the provision and rush to this Court and that too for the second time. The decision of the Division Bench does not lay down any law, it merely states power under Section 7-A of the Act has to be exercised. Even assuming that authority has not exercised the power under Section 7-A of the Act properly, such ground will have to be raised in a regular appeal before the Tribunal. It is in this context, it is necessary to refer to the judgment in *Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement* and another reported in 2010 (4) LW 1, wherein it has held that the statutory forum is created for redressal of grievance that too in a fiscal statute, a writ petition should not be entertained. In that case, an appeal itself was available to the High Court. In repelling that contention, in paragraphs 44 and 45, it was observed as follows:

44. Therefore, principle laid down in the *Ratan's case* (supra) applies in the facts and circumstances of this case. If the appellant in this case is allowed to file a writ petition despite the existence of an efficacious remedy by way of appeal under Section 35 of FEMA this will enable him to defeat the provisions of the Statute which may provide for certain conditions for filing the appeal, like limitation, payment of court fees or deposit of some amount of penalty or fulfillment of some other conditions for entertaining the appeal. (See para 13 at page 408 of the report). It is obvious that a writ court should not encourage the aforesaid trend of by-passing a statutory provision.

45. Learned counsel for the appellant relied on a decision of this Court in *Monotosh Saha Vs. Special Director, Enforcement Directorate* and another (2008) 12 SCC 359. That was a decision entirely on different facts. In that decision Saha preferred an appeal before the appellate tribunal with a request for dispensing with requirement of pre-deposit, but the tribunal directed the deposit of 60% of the penalty amount before entertaining the appeal. When an appeal was preferred before the High Court under Section 35 of the FEMA, the same was dismissed by the High Court holding that no case for hardship was made out either before the tribunal or before it. In the background of those facts, this Court observed that since pursuant to this Court's interim order Rs.10 lacs have been deposited with

the Directorate, the appellant was directed to furnish further such security as may be stipulated by the tribunal and directed that on such deposit tribunal is to hear the appeal without requiring further deposit.

10. In the light of the above, the writ petitions stand dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

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