(2015) 03 KL CK 0053

In the High Court Of Kerala

Case No : Writ Petition(C). No. 32703 of 2003 (R)

A. Abdul Vaheed APPELLANT

Vs

The Regional Provident Fund Commissioner and Others RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7A, 7B, 7Q

Citation : (2015) 03 KL CK 0053

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Gopakumar R. Thaliyal and Jubyraj A.P., for the Appellant; N.N. Sugunapalan, Senior Advocate and N. Sujin, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The petitioner is aggrieved with Exhibit P4 order under Section 14B of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 [for brevity "EPF Act"] imposing damages for failure to remit contributions under the Act between 07/1995 to 02/2000. The petitioner admittedly did not voluntarily seek coverage under the EPF Act. Proceedings were initiated under Section 7A of the Act and two establishments were clubbed together, assessing contributions from 1995 onwards. The employees'' contribution payable by the petitioner-establishment prior to the initiation of Section 7A proceedings were waived under the provisions of the Act itself.

2. Subsequently, notice was issued under Sections 7Q and 14B of the Act for imposition of interest and damages. Exhibit P2 is the notice, wherein an amount of Rs. 18,004/- was demanded as interest under Section 7Q and an amount of Rs. 75,026/- as damages under Section 14B. Detailed computation was also given. The petitioner is said to have replied to Exhibit P2 by Exhibit P3 dated 02.12.2002. However, it is not known as to how the said application for time was

filed, since that was not referred to in Exhibit P4 order. Exhibit P4 order specifically speaks of the petitioner having neither replied to the notice; nor any representative having appeared for the personal hearing fixed on 03.12.2002. An order was passed, imposing Section 14B damages as indicated in Exhibit P2 notice. Separate orders were passed under Section 7Q also.

3. It is trite that no appeal lies from Section 7Q order, since the interest is held to be compensatory and automatic, in Arcot Textile Mills Ltd. Vs. The Regional Provident Fund Commissioner and Others, . The learned counsel for the petitioner contends that, the petitioner was not heard before Exhibit P4 order was passed and that the petitioner''s objections at Exhibit P6 have not been considered. Exhibit P6 objection was filed long after Exhibit P4 was passed. It is to be noticed that Exhibit P4 is an appealable order and the petitioner did not file an appeal from that order. When demand notices were issued, the petitioner approached this Court under Article 226 of the Constitution of India.

4. The petitioner would contend that interim stay was granted only on the ground of no opportunity of hearing being afforded to the petitioner and that the matter having been admitted, the question of alternate remedy does not at all arise. This Court is not inclined to accept such a contention. True, an interim order was granted; but that cannot be said to be on the ground of violation of principles of natural justice, since no detailed order has been passed. The order Exhibit P4 was dated 03.12.2002, which was issued on 09.12.2002. The petitioner has approached this Court on 17.10.2003, long after the period, for availing the appellate remedy, was over. The period provided under the statute to file an appeal is sixty days from the date of communication of the order; with a further time of sixty days in which the assessee could file an appeal with satisfactory explanation for delay.

5. The mere fact that the above writ petition was admitted, does not commend exercise of an appellate jurisdiction under Article 226 of the Constitution. The question of violation of principles of natural justice also cannot be countenanced, since the petitioner was specifically granted an opportunity for hearing on 03.12.2002; but had not replied nor the petitioner represented before the authority. Though the petitioner contends that Exhibit P3 request for adjournment was given, there is nothing to substantiate the same. In any event, the objection itself at Exhibit P6 was filed after the order was passed. If the petitioner had a contention against Exhibit P4, then necessarily, being aware of Exhibit P4 order, which is referred to in Exhibit P6 objection, the petitioner ought to have approached the appellate authority and not filed an objection before the authority who becomes functus officio on the order being passed. It is also pertinent that a specific power to review the order under Section 7A, as provided in Section 7B has also not been invoked by the petitioner. In such circumstance, there would be absolutely no reason why this Court should exercise the extra ordinary jurisdiction under Article 226 of the Constitution to interfere with Exhibit P4 order.

6. For all the above reasons, the writ petition is found to be devoid of merit and the same is dismissed. No costs.

7. Definitely there is some difference in computation, which has been communicated to the petitioner by Exhibit R2(a), where the damages under Section 14B has been reduced to Rs. 58,206/-. Surely, that would enure to the benefit of the petitioner. The petitioner''s counsel submits that the interest under Section 7Q has already been paid. Hence, it is directed that, the petitioner would be entitled to satisfy the damages under Section 14B in three equal monthly instalments, starting on the 30th of April, 2015 and to be followed up by remittances on the 30th of the two succeeding months. If default is committed, the respondent-Organisation would be entitled to proceed for recovery of the amounts.

Ordered accordingly.