(2015) 03 JH CK 0107

In the Jharkhand High Court

Case No : Writ Petition (C) 5559 of 2012

Akhil Bhartiya Sikshak Kalyan Sangh APPELLANT

Vs

Employees' Provident Fund Organisation and Others RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Citation : (2015) 146 FLR 476 : (2015) LLR 716

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Manish Kumar, for the Appellant; Banani Verma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Aggrieved by orders dated 11.04.2012 and 31.05.2012, the petitioner-Akhil Bhartiya, Sikshak Kalyan Sangh has approached this Court by filing the present writ petition. The brief facts of the case are that, on 4.5.2010 a complaint was submitted by the Secretary of the petitioner Sangh alleging evasion of Provident Fund contribution with respect to 21 employees. A notice was issued to the establishment and a proceeding under Section 7A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 was initiated. A copy of the complaint dated 04.05.2010 was served upon the establishment and after hearing the parties, order dated 11.04.2012 has been passed. Aggrieved the petitioner-Sangh filed a review application which was also dismissed vide order dated 31.05.2012.

2. A counter-affidavit has been filed justifying the impugned orders dated 11.04.2012 and 31.05.2012.

3. Heard the learned counsel for the parties.

4. The learned counsel for the petitioner-Sangh refers to the complaint dated 04.05.2010 and submits that, a specific complaint was raised by the petitioner-Sangh alleging discrimination between the employees of the school however, the

said issue has not been decided by the Assistant Provident Fund Commissioner, Ranchi and the review application filed by the petitioner-Sangh has also been erroneously rejected vide order dated 31.05.2012. It is submitted that, by adopting a discriminatory policy among the employees of the school in as much as, contribution for one set of teachers has been deposited at the rate of 12% of the gross salary whereas, with respect to other employees it has been restricted to the maximum of Rs. 780, two different class of teachers have been created by the management which would affect the retrial benefits of the teachers which is not permissible under the Act and thus, the orders impugned in the present proceeding are liable to be quashed.

5. Mrs. Banani Verma, the learned counsel for the respondent Nos. 1 to 3 refers to Section 6 of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 and submits that, an employer is not obliged to contribute more than the maximum prescribed under the Act. She further refers to paragraph No. 29 of the Employees'' Provident Funds Scheme, 1952 and with reference to the decision in N. Vijayan and Others Vs. The Secretary to Govt. and another, (2006) 3 ILR (Ker) 42 : (2006) 3 KLJ 34 : (2006) 3 KLT 291 : (2006) 3 LLJ 337 submits that, there is no contravention of Section 12 of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. It is further submitted that, initially vide order dated 19.08.2010 a provisional assessment was made and the management was directed to deposit a sum of Rs. 16,10,845/- which, in the proceeding under Section 7A of the Act has been modified and the management has been directed to pay Rs. 2,52,849/- for the period between January, 2002 to March, 2008.

6. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

7. From the affidavits filed on behalf of the parties, I find that there is not much dispute with respect to the assessment made by the Assistant Provident Fund Commissioner, in so far as, liability of the management to pay in terms of the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 is concerned however, the petitioner has raised a grievance that the specific complaint made by the petitioner-Sangh alleging discrimination between two sets of employees has not been considered by the Assistant Provident Fund Commissioner, Ranchi. With reference to the grievance of the petitioner I find that before initiating a proceeding under Section 7A of the Act, a report was sought from the Enforcement Officer. In the report it has been mentioned that the management initially continued to contribute its Provident Fund contribution in excess of the limit prescribed under the Act and thereafter it stopped its contribution in excess of the limit. However, it again started contributing in excess of the limit from 01.04.2006 however, only with respect to those employees who were regular employees of the school upto 31.03.2004. It has also been mentioned in the report that after the audit objection, the employer discontinued to contribute its Provident Fund contribution in excess of the

statutory limit. In order dated 11.04.2012, the Assistant Provident Fund Commissioner has recorded a finding that no document regarding deduction of contribution on higher wages with respect to a class of employees was produced. A copy of the review application has also not been produced on record by the petitioner though, the matter was adjourned on previous occasion directing the petitioner to bring on record additional documents. Even assuming that the petitioner-Sangh has raised a specific plea in the review application that its contention that by contributing 12% of the gross salary for a class of employees and by restricting the contribution to a maximum of Rs. 780 for a class of another employees has not been considered, I find that in the report of the Enforcement Officer it has been noted that for sometime such practice was adopted by the management with respect to the employees who were on regular roll of the management upto 31.3.2004 and thereafter, it has been discontinued. It is not the case of the petitioner that the respondent-management has not deposited its contribution as per law rather, it is an admitted position that the management has been depositing its contribution strictly in terms of Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 and the Rules and there is no violation of Section 12 of the Act. The plea taken by the petitioner-Sangh is in fact for a direction to the management to contribute in excess of the statutory limit for which no direction can be issued by the Court. I do not find any legal right in the petitioner-Sangh espousing the cause of a class of teachers for issuing a mandamus to the management. I find no merit and accordingly, the writ petition is dismissed.

