(2004) 03 P&H CK 0140

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 3331 of 2004

Arihant Threads Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 25-03-2004

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2004) 3 LLJ 987 : (2004) 2 RCR(Civil) 904

Hon'ble Judges : Swatanter Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Naveen Mahajan, for the Appellant; M.S. Guglani, A.C.G.S.C. for Respondent No. 1 and Rajesh Bindal, for the Respondent

Judgement

Swatanter Kumar, J.—By this judgment, we shall dispose of Writ Petition Nos. 3331 of 2004, 2676 of 2004, 1949 of 2004, 1950 of 2004, 5190 of 2004 and 3440 of 2004 as they are based on common question of law and facts arising out in some-what similar circumstances.

2. It is not necessary for us to notice the facts of each case. However, we would refer to the facts of CWP No. 3331 of 2000 for the purposes of brevity.

3. The petitioner is a company engaged in manufacturing of threads and is having strength of about 250 employees with a turnover of about 60 crores. Office of the Provident Fund Commissioner have issued a notice to the petitioner u/s 7-A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short ''the Act'') for not depositing the E.P.F. from January 2002 to March 2002. After examining the explanation rendered by the petitioner, the authorities passed an order dated December 12, 2002, whereby it was directed that a sum of Rs. 7,76,641/- be recovered from the petitioner-company. The petitioner-company in exercise of the rights available to it under the statute itself, preferred an appeal on January 12, 2004 before the appellate Tribunal. The said appeal though, was presented but was never put up for hearing either on merit or for grant of interim direction because the Central Government had not

appointed any individual to preside over the Appellate Tribunal. On the other hand, the department adopted coercive methods for recovery of the demand raised under the impugned order. This compelled the petitioner-company to file the present writ petition before this Court. While issuing the notice to show cause, the Bench of this Court vide its order dated February 27, 2004 directed as under:

"Notice to show cause why petition be not admitted.

At the direction of the Court, Shri M.S. Guglani, Additional Central Government Standing Counsel appearing for the Union of India accepts notice.

The sole prayer in this petition as well as in number of other connected cases is that the petitioners herein have filed their statutory appeals in the Office of the Regional Provident Fund Commissioner, but along with prayer for interim order despite the fact that appeals have been pending for a considerable time, they are not being taken up for hearing and no interim orders are being passed. The application for interim orders are not being considered by the concerned authorities, the reason being that no appellate authority under the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 has been appointed by the Union of India. On the other hand, the Department is attempting to take coercive steps for recovery of dues.

We find this to be admittedly an unfair practice adopted by the department.

We refrain ourselves at this stage from expressing any view and direct Shri M.S. Guglani to take complete instructions as to why the appellate authority has not been nominated so far and further more to do the needful before the next date of hearing. We make it clear that in the event of default, the concerned Joint Secretary of the Ministry of Finance, New Delhi, Union of India shall be present in Court.

Copy of the order be given under the signatures of the Bench Secretary."

4. Reply has been filed on behalf of the Union of India now, where it has been stated that they had invited applications by issuing a circular on September 11, 2003 for filling up the post of Presiding Officer of the Appellate Tribunal. Thereafter, they had even recommended the names for appointment on the said post to the Ministry, Department of Personnel and Training, Government of India, New Delhi on December 2, 2003 and since then the matter is pending before the concerned ministry. However, it is further clarified that the names have been finalised and the matter is now pending approval before the cabinet committee in the light of the judgment and direction issued by the High Court of Delhi.

5. We have already noticed that it is not a fair practice, which is being adopted by the department to coercively recover alleged demand without even permitting the petitioner-company to exhaust the statutory remedy provided under the provisions of the Act itself. The learned counsel appearing for the Provident Fund Commissioner had sought time to seek instructions from his clients and has very

fairly stated before the Court that in the event the petitioner-company filed an appeal in the office of the Appellate Tribunal accompanied by a stay application, the Recovery Officer will not make any recovery from the petitioner- company till the disposal of the interim application praying for stay.

6. Learned counsel appearing for the Union of India also assures the Court that all steps will be taken by the concerned ministry to have the appointments finalised expeditiously and without any unnecessary delay.

7. In view of the statements made on behalf of the Union of India as well as the Provident Fund Commissioner, we do not consider it necessary to go into the merits of the various contentions raised before us. Suffice it to say that the stand taken by the respondents is fair, just and equitable.

8. On the basis of the statements made on behalf of the respondents, we dispose of this writ petition with directions that the petitioner can file appeal(s) accompanied by a stay application, if not already filed, within two weeks from today. If such appeal(s) are filed, proof thereof is shown to the Recovery Officer, then said Officer would not effect recovery of the demand issued u/s 7-A of the Act till decision of the stay application, as stated by the learned counsel appearing for the respondents. We make it clear that the direction would obviously operate only till the disposal of the stay application by the competent authority.

9. We have pious hope that Union of India shall expeditiously make the appointment of the Presiding Officer of the Appellate Tribunal and Regional Provident Fund Commissioner exercising jurisdiction over Punjab and Haryana would not compel the people to approach the Court. Such litigation, obviously, is avoidable by timely action on the part of the official respondents.

10. We expect that State of Haryana, State of Punjab which also exercises power over Union Territory of Chandigarh would take due notice of this order and take appropriate measures at their own level to achieve the public purpose to avoid unnecessary litigation. Obvious result thereof would be less burden on the State exchequer which the State would incur in filing and defending avoidable litigation.

11. All these writ petitions are accordingly disposed of with the above directions.

