(2013) 12 JH CK 0026

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3636 of 2007

Ashok Kumar Sinha APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2014) 140 FLR 107 : (2014) LLR 269

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : D.K. Chakraverty, for the Appellant; P.P.N. Roy, for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned Counsel for the parties.

The petitioner has sought quashing of the order dated 27.1.2005, by which his application u/s 7A of the Employees'' Provident Fund & Miscellaneous Provisions Act, 1952 has been rejected.

The petitioner had come before this Court earlier challenging the order dated 28th November, 2003 passed by Assistant Provident Fund Commissioner, Jharkhand, Ranchi u/s 7A of the Employees'' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act of 1952). The said writ petition being W.P. (C) No. 4408 of 2004 was dismissed, however, giving liberty to the petitioner to approach the respondents invoking the remedy under sub-section (4) of section 7A of the said Act of 1952. The petitioner thereafter preferred his application vide Annexure-5 and the impugned order dated 27th January, 2005 has been passed rejecting the same by the Assistant Provident Fund Commissioner (Compliance), EPF Organization, Regional Officer, Ranchi.

2. The petitioner assails the impugned order stating that the notices for initiation of a proceedings were issued for a period of 1st January, 2001 to September, 2001, instead the respondent-A.P.F.C., has, in the impugned order, observed that with the consent of the employer, the period of inquiry was modified from 1st January, 2001 to December, 2002.

3. The petitioner states that he had submitted returns and filed challan in respect of the employees, which were on his rolls and deposited the amount due against Provident Fund Contribution on the part of the employer vide Annexures 8 and Annexure-9 for the periods February, 2001 to August, 2001 and September, 2001 to October, 2001 respectively. It is the contention of the petitioner that contrary to his consent, the learned Assistant Provident Fund Commissioner has extended the period of inquiry beyond September, 2001, although the petitioner was never noticed in respect of the same.

4. The respondents have appeared and filed their counter-affidavit stating that the amount determined by the Assessing Officer is based on the records available in the office, but the establishment has deposited the amount on the basis of his own assessment which is less than the amount assessed by the Assessing Officer. From perusal of the aforesaid orders, it appears that the case of the petitioner requires reconsideration as it relates to conflicting stand taken by the employer-establishment and the E.P.F. authorities as to the quantum of contribution due against the establishment in respect of the employees on its roll during the period in question. Since the aforesaid issue relates to a finding of fact, which does not seem to have been arrived at in the impugned orders, the petitioner is allowed liberty to approach the respondent under the statutory provisions of review u/s 7B of the Act, 1952 within a period of 30 days from the date of this order. If such an application is made within the aforesaid period, the respondents shall consider the same as also the question of delay sympathetically in view of the fact that the petitioner had approached this Court against the impugned order passed u/s 7A(4) of the Act, 1952 and the writ petition was pending. The writ petition is accordingly disposed of with the aforesaid observations/directions.

