

(2014) 09 GUJ CK 0075

In the Gujarat High Court

Case No : Letters Patent Appeal No. 884 of 2012 in Special Civil Application no. 3135 of 2012

Assistant P.F. Commissioner

APPELLANT

Vs

Remya Erectors

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Citation : (2014) 143 FLR 872 : (2015) 1 LLJ 501

Hon'ble Judges : Jayant M. Patel, J;C.L. Soni, J

Bench : Division Bench

Advocate : E. Shailaja, Advocate for the Appellant; Arpit P. Patel, Advocate and Vipul P. Panchal, Advocate for the Respondent

Judgement

Jayant M. Patel, J.—The present appeal is directed against the order dated 10.04.2012 passed by the learned Single Judge of this Court in SCA No. 3135/12, whereby the learned Single Judge has dismissed the petition.

2. The short facts of the case appears to be that the proceedings were initiated under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). As per the appellant, the matter was adjourned from time to time and on the last date, i.e., on 21.07.2008, when the enforcement officer submitted deposition and the documents, the respondents were not present. Hence, the inquiry was closed and thereafter, the order dated 30/31.07.2008 was passed whereby the direction was issued to remit the dues of Rs. 2,99,426/-. The respondent carried the matter in appeal before the appellate tribunal under the Act. The Tribunal vide order dated 07.09.2011 allowed the appeal mainly on the ground that no opportunity was not given to the appellant to cross-examine the enforcement officer and the documents were not supplied and therefore, there was breach of principles of natural justice. The appellant preferred petition before this Court which came to be dismissed by the learned Single Judge. Under the circumstances, the present appeal before the Division Bench of this Court.

3. We have heard Ms. Shailaja, learned counsel appearing for the appellant and Mr. Patel for the respondent no. 1. The presence of respondent no. 2 may not be required since he is a formal party.

4. It appears from the perusal of the order of the appellate tribunal that the appellate tribunal considered that the entire order of the appellant is based on the report of the enforcement officer. The report of enforcement officer was not supplied nor any opportunity was given to cross-examine him and therefore, there was breach of principles of natural justice.

5. The learned Single Judge extracted the view at paras 6 and 7 of the order of the appellate tribunal and found that the learned advocate for the petitioner is not in a position to show anything from the record to take a different view and therefore, the petition was dismissed.

6. In our view, the order of the appellate tribunal shows that the finding recorded was for breach of principles of natural justice. It is an admitted position that on the last date when the inquiry was concluded, the deposition and documents were produced by the enforcement officer which is titled as Report, the respondent no. 1 was not present and thereafter, the order has been passed. As nobody was present on behalf of the respondent no. 1, neither report was supplied nor the enforcement officer was cross-examined. The grievance on the part of the appellant is that the opportunity was given but they did not avail of.

7. In our view, even if the appellate tribunal found that there was breach of principles of natural justice, the judicial discretion would require the matter to be remanded to the first authority for considering the matter once again from the stage where it was found that the further proceedings were in breach of principles of natural justice. Had it been a case of the authority exercising the power as administrative authority and the breach of principles of natural justice is recorded, such might stand on different footing and different consideration, but when the power is exercised by the quasi judicial authority and the appellate authority finds that there was breach of principles of natural justice, generally the power may be attracted to remand the matter so that the real cause, if any, may not get frustrated. The appellate tribunal did not exercise the jurisdiction to remand the matter and therefore, it could be said as an error apparent on the face of record or error of the jurisdiction.

8. Under the circumstances, we find that the matter would be required to be remanded to the first authority to consider from the stage of production of the deposition/documents by the enforcement officer. Thereafter, the opportunity may be given to the respondent no. 1 to cross-examine and to put forward their case and the matter shall be decided after hearing both the sides by fresh decision.

9. Mr. Patel, learned counsel appearing for the respondent no. 1 attempted to contend that it was also on merits the appellate authority examined the matter and hence matter may not be remanded to the first authority.

10. We are not inclined to accept the contention because the observations were on ex parte proceedings in which the opportunity was not given and therefore, the passing observations by the Tribunal on merits cannot be read to decline the exercise of power for remand with a view to have the consideration of the matter after observance of the principles of natural justice.

11. In view of the aforesaid observations and discussions, the order passed by the first authority dated 31.07.2008 as well as the order passed by the appellate authority dated 07.09.2011 are quashed and set aside with the further direction that the proceedings before the Assistant Provident Fund Commissioner of Case No. 280 (2004-2005) shall stand restored. The Assistant Provident Fund Commissioner is directed to consider the matter from the stage of production of the deposition/documents by the enforcement officer and after giving opportunity to the respondent no. 1 to cross-examine the enforcement officer, if they so desire, and to hear both the sides and to pass fresh order in accordance with law within a period of six months from the receipt of the order of this Court. It is observed that the amount already deposited shall be subject to the final order which may be passed by the Assistant Provident Fund Commissioner as per the above referred direction.

12. The order of the learned Single Judge is quashed and set aside. The appeal is allowed to the aforesaid extent. Considering the facts and circumstances, no order as to costs.