(2012) 09 AP CK 0113

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7963 of 2000

Assistant Provident Fund Commissioner, Visakhapatnam	APPELLANT
Vs	
Employees Provident Fund Appellate Tribunal and Another	RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:
Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17, 7A, 7I
Foreign Exchange Regulation Act, 1973 — Section 54

Citation : (2013) 1 ALD 87 : (2013) 2 ALT 61 : (2013) 136 FLR 818 : (2013) 2 LLJ 82 : (2013) LLR 437

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.S. Ramachandra Rao

1. This Writ Petition has been filed by the Assistant Provident Fund Commissioner, Visakhapatnam, challenging the order dated 10.05.1999 passed by the Employees Provident Fund Appellate Tribunal in appeal No. ATA/1(18) 99/1351. The second respondent is a Public Limited Company incorporated under the Companies Act, 1956. It has set up a factory for its Company at Rajahmundry. However, the Government of Andhra Pradesh had granted exemption to the establishment of the respondent company by notification dated 18.05.1982 issued in exercise of powers u/s 17 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, ''the Act''). Pursuant to a settlement dated 03.07.1990 with its Union the second respondent revised the Basic Wages, Scheme of Dearness Allowance, Leave Travel Allowance, House Rent Allowance and Educational Allowance apart from making payment of adhoc amount of Rs. 2,800/- to all permanent workmen who were on the rolls as on 01.11.1989 and continued to be on the rolls on 01.07.1990. The terms of the settlement specifically provide that adhoc payment would not be referred as

remuneration/wages and would not be treated for E.S.I., P.F., Bonus etc., or any other payment linked with the wages. The Office of the Regional Provident Fund Commissioner, Visakhapatnam (the petitioner herein), however, insisted that payment of adhoc amount of Rs. 2,800/- under the settlement dated 03.07.1990 is "wage arrears" and respondent No. 2 has to pay Provident Fund contribution on the said amount and initiated enquiry u/s 7-A of the Act to decide as to whether Provident Fund contributions are payable on this amount paid to the workmen by the 2nd respondent.

2. On 31.10.1995, the petitioner, in exercise of powers u/s 7-A of the Act, directed the second respondent Company to pay an amount of Rs. 2,54,885/- as Provident Fund contribution and other charges on the adhoc amount of Rs. 2,800/- paid to the permanent workmen, who were on the rolls as on 01.11.1989 and continued to be on rolls on 01.07.1990 under the settlement dated 03.07.1990. Challenging this order, the second respondent filed W.P. No. 25331 of 1995 and obtained stay of operation of the order dated 31.10.1995 of the petitioner. In the mean time, in September 1998 the Appellate Tribunal u/s 7-I of the Act was constituted and in view of this development, the Hon''ble High Court by order dated 22.01.1999 gave liberty to the second respondent to avail the remedy of appeal and directed that the stay of operation of the impugned order dated 31.10.1995 of the petitioner be continued till the disposal of appeal to be filed by the 2nd respondent. Thereafter, the second respondent filed an appeal before the first respondent u/s 7-I of the Act. After hearing both the parties, the first respondent passed the impugned order dated 10.05.1999 allowing the appeal and setting aside the order dated 31.10.1995 of the petitioner.

3. Heard Sri R.N. Reddy, learned counsel for the petitioner and Sri I. Nagesh, learned counsel for the second respondent.

4. Learned counsel for the second respondent raised a preliminary objection to the maintainability of the Writ Petition alleging that the petitioner, who is the Assistant Provident Fund Commissioner, is not a competent and authorized person to file the Writ Petition challenging the impugned order dated 10.05.1999.

5. Learned counsel for the petitioner contended that the Assistant Provident Fund Commissioner is entitled to question the order of the first respondent Tribunal and that the Writ Petition filed by the petitioner is maintainable.

6. It is not in dispute that the petitioner is the Assistant Provident Fund Commissioner, Visakhapatnam, a statutory authority exercising quasi-judicial powers u/s 7-A of the Act. The order dated 31.10.1995 was passed by him in exercise of his powers u/s 7-A of the Act has been set aside by the first respondent-Tribunal in Appeal No. ATA/1(18) 99/1351, dated 10.05.1999. The petitioner has challenged the said order by filing this Writ petition.

7. The question is whether the petitioner can be said to be an aggrieved person entitled to challenge the order passed by the first respondent. In my opinion, a

person can said to be aggrieved, if his interests are adversely affected by adjudication and the said adjudication has deprived him of something to which he had a right. The Assistant Provident Fund Commissioner, Visakhapatnam, who is the petitioner herein, is a quasi-judicial authority entitled to exercise the powers conferred u/s 7-A of the Act by following principles of natural justice. He has no role to step into the shoes of the party to a dispute. He is not a party to the lis. All his decisions are subject to the appeals provided under the statute. In Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate and Another, , the Supreme Court of India while considering the provisions of Section 54 of the Foreign Exchange Regulation Act, 1973 held as under:

An adjudicating authority exercises a quasi-judicial power and discharges judicial functions. When its order had been set aside by the Board, ordinarily in absence of any power to prefer an appeal, it could not do so. The reasonings of the High Court that he had general power, in our opinion, is fallacious. For the purpose of exercising the functions of the Central Government, the officer concerned must be specifically authorized. Only when an officer is so specifically authorized, he can act on behalf of the Central Government and not otherwise. Only because an officer has been appointed for the purpose of acting in terms of the provisions of the Act, the same would not by itself entitle an officer to discharge all or any of the functions of the Central Government. Even ordinarily a quasi-judicial authority cannot prefer an appeal being aggrieved by and dissatisfied with the judgment of the appellate authority whereby and whereunder its judgment has been set aside. An adjudicating authority, although an officer of the Central Government, should act as an impartial tribunal. An adjudicating authority, therefore, in absence of any power conferred upon it in this behalf by the Central Government, could not prefer any appeal against the order passed by the Appellate Board.

8. Similar view has also been expressed in The District Collector, Srikakulam and Others Vs. Bagathi Krishna Rao and Another, wherein the Supreme Court of India held that an appeal which has been filed by the District Collector, Mandal Revenue Officer and District Forest Officer as against the judgment in a suit is not maintainable and that the State of Andhra Pradesh is a necessary party.

9. In The Joint Collector, Ranga Reddy District (Appellate Authority under Inams Abolition Act), The Revenue Divisional Officer (Inams Tribunal), Chevella Division and The Mandal Revenue Officer, Balangar Mandal Vs. P.V. Narasimha Rao and Others,), the Division Bench of this Court held that quasi judicial bodies constituted under provisions of an Act as primary and appellate authorities cannot be said to be aggrieved parties if their orders are set aside in appeal and challenge such orders while supporting their own orders.

10. In Asstt. Provident Fund Commissioner Vs. Nirmitee Holidays (P) Ltd., the Bombay High Court held that the Assistant Provident Fund Commissioner, who challenged the order passed by the Employees Provident Fund Tribunal, New Delhi, in an appeal preferred u/s 7-I of the Act against the order is not entitled to

maintain a writ petition challenging the order of the Employees Provident Fund Tribunal passed u/s 7-I of the Act. The Bombay High Court also held that the Assistant Provident Fund Commissioner is exercising quasi-judicial functions while passing the order u/s 7-A of the Act and when the said order has been set aside by the appellate Tribunal u/s 7-I of the Act, it would not be permissible for the Assistant Provident Fund Commissioner to challenge the order passed by the Appellate Tribunal reversing his order. It held that permitting such exercise would be subversive of judicial discipline.

11. I respectfully agree with the above decisions and hold that the Assistant Provident Fund Commissioner exercises quasi-judicial functions and he is not supposed to defend his own orders (when his orders are challenged before the Appellate Tribunal and set aside by such Tribunal), by challenging the orders of the Tribunal in a Writ Petition filed under Article 226 of the Constitution of India. Any such exercise by the Assistant Provident Fund Commissioner is subversive of judicial discipline. Learned counsel for the petitioner has not been able to point out any provision of the Act which entitles the Assistant Provident Fund Commissioner to question the orders passed in an appeal against its own order. Therefore, I hold that the Writ Petition is not maintainable at the instance of the petitioner and accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.