

(2011) 01 DEL CK 0408

In the Delhi High Court

Case No : Writ Petition (C) No. 100 of 2011

B. Mansukhlal and Company

APPELLANT

Vs

Employees' Provident Fund Organisation and Others

RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

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

Citation : (2011) 3 LLJ 712 : (2011) LLR 240

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Rajiv Shukla, for the Appellant; R.C. Chawla, for the Respondent

Judgement

Sudershan Kumar Misra, J.—This writ petition has been filed impugning the order passed in an appeal by the Employees' Provident Fund Appellate Tribunal on 25th July, 2010 at a camp hearing held in Guntur (Andhra Pradesh). This appeal was instituted by the Petitioner at the office of the Tribunal at Laxmi Nagar, Delhi against the order passed by the Provident Fund Authority u/s 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. It is alleged, inter alia, that a notice dated 22nd June, 2010 was sent by the Tribunal to the Petitioner informing him that the matter, "is fixed for hearing on 23rd July, 2010 at 10:30 am before the Hon'ble President Officer/Registrar". Since the seat of the Tribunal is at Delhi, counsel for the Petitioner is stated to have gone to the office of the Tribunal at the address mentioned in the aforesaid notice on 23rd July, 2010. Counsel for the Petitioner states that, however, no hearing took place there on that day because the Presiding Officer and the Registrar had left to hold the, "Camp Hearing", at Guntur (AP). A perusal of the aforesaid notice dated 22nd June, 2010 shows that it does not have any indication of the fact that the hearing is proposed to be held at Guntur (AP). Furthermore, it is also averred that keeping in view the fact that the office of the Tribunal is at Delhi, the Petitioner/Appellant had also engaged a counsel from Delhi to represent his case. Under the circumstances, the Appellant had neither the opportunity nor sufficient

notice to adequately engage a counsel and present his case at the Camp Hearing, which evidently took place at Guniur (AP) on 23rd July, 2010, which has led to the impugned order being passed thereafter on 25th July, 2010.

2. Counsel for the Petitioner has further drawn the attention of this Court to an earlier decision of this Court in *Xavier Institute of Social Service v. Employees Provident Fund Appellate and Ors.* WP (C) No. 1235/2010, decided on 2nd March, 2010: 2010 LLR 470 (Del) where, inter alia, for similar reasons, the order of the Tribunal impugned in that matter was set aside. In that matter, it was further noticed that there was no request, nor was any consent taken from the Petitioner to fix the hearing of the appeal at the camp office at Kolkata. In the present case also, it is alleged that no such request was made nor any consent taken from the Petitioner for holding the camp hearing at Guntur (AP).

Issue notice to the Respondents to show cause as to why Rule nisi be not issued.

3. Mr. Chawla, Advocate, who appears on an advance notice, accepts notice and submits that looking to the pertinent facts, and particularly the circumstances as averred by counsel for the Petitioner, under which the impugned order came to be passed, he does not seriously oppose the matter since it is, admittedly, the right of a litigant to be given adequate notice and due opportunity to present his case. I notice that Mr. Chawla had also appeared on behalf of the Respondent in the case of where a similar view was taken. It would be useful to reproduce the observations of this Court in the aforesaid case of which are as follows:

7. Before parting with this order, this Court would like to observe that many such matters are coming before this Court where appeals filed by the various establishments are getting dismissed due to the non-appearance of the Petitioners or their counsels at the camp hearings. Undoubtedly, it is the prerogative of the Tribunal to fix such camp hearings, as the prime objective appears to be that hearing at such camps should be in proximity to the place of establishments of such Petitioners. Yet, in all such cases the Petitioner may require to engage another advocate practicing at the place or near to the place of camp hearing which would put unnecessary financial burden on such establishments. In the foregoing, this Court is of the view that at least the consent of such Petitioners in advance be taken by the Appellate Tribunal and camp hearings be fixed only in those cases where such establishments give their consent. In any event of the matter, the Appellate Tribunal is expected not to dismiss such appeals when taken up at such camp hearings: as such orders will cause serious prejudice to the rights of the Petitioners leading to avoidable financial burden.

4. To my mind, the above observations apply with full force in this matter also. In that view of the matter, the impugned order dated 25th July, 2010 is set aside and the Tribunal is directed to take up the matter on 17th February, 2011, from the stage at which the notice dated 22nd June, 2010 in EPA No. 640(1) 2004 came to be issued.

The writ petition stands disposed of in the above terms.

CM No. 198/2011 (stay)

5. In view of the orders passed in the main petition, this application does not survive and the same is also disposed of in the above terms thereof.