(2018) 10 PAT CK 0044

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.16336 of 2010

Central Board of Trustees @APPELLANT@Hash M/S Gandak Area Development Agency

Date of Decision : 26-10-2018

Acts Referred:
Employees? Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(a), 7A, 16, 16(b)(c)
Bihar Agriculture & Rural Area Development Agency Act, 1978 — Section 33

Citation : (2018) 10 PAT CK 0044

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Jai Prakash Verma, Satish Chandra Jha

Final Decision : Allowed

Judgement

1. This writ petition has been filed by the petitioner challenging the order dated 24.11.2009 passed in ATA No. 681 (3) of 2006 by the Presiding

Officer, Employees Provident Fund Appellate Tribunal, New Delhi whereby he has set aside the order dated 23.10.2006/31.10.2006 passed by the

Assistant Provident Fund Commissioner, Muzaffarpur under Section 7A of the Employees? Provident Funds and Miscellaneous Provisions Act, 1952

(for short â??EPF & MP Act, 1952?) by which the respondent herein was directed to pay the entire outstanding dues i.e. Rs.5796695/-(rupees fifty

seven lakh ninety six thousand six hundred and ninety five).

2. The admitted facts of the case are that M/s Gandak Area Development Agency had been covered under Section 2(a) of the EPF & MP Act, 1952

with effect from 01.04.1982. The strength of the employees was 38 as on 01.04.1982 as per the list provided by the Executive Engineer of Planning

and Investigation Department, Raxaul of the respondent establishment. The establishment was directed to comply with the provisions of the EPF &

MP Act, 1952 and submit returns. Despite repeated reminders, it failed to comply with the provisions of the EPF & MP Act, 1952. Hence, in a

proceeding initiated under section 7A of the EPF & MP Act, 1952, after affording an adequate opportunity of being heard, vide order dated

23.10.2006/31.10.2006, the Assistant Provident Fund Commissioner, Muzaffarpur directed the establishment to pay the entire outstanding dues i.e.

Rs.5796695/- (rupees fifty seven lakh ninety six thousand six hundred and ninety five) in the accounts of EPFO, Muzaffarpur maintained at State

Bank of India, Red Cross Building, Muzaffarpur within fifteen days of the receipt of the order. Being aggrieved by the order passed under Section 7A,

an appeal was preferred by the respondent establishment before the Employees Provident Fund Appellate Tribunal, New Delhi, vide ATA No.

681(3)/2006. Vide impugned order dated 24.11.2009, the said appeal of the respondent was allowed and the order passed by the Assistant Provident

Fund Commissioner under Section 7A of the EPF & MP Act, 1952 was quashed holding that respondent establishment was not liable to pay PPF

contribution as the EPF & MP Act, 1952 did not apply to the establishment. Being aggrieved by the order passed by the Appellate Tribunal, the instant

application has been filed by the petitioner.

3. Assailing the impugned order dated 24.11.2009 passed by the Appellate Tribunal, learned counsel for the petitioner submitted that before passing

the order of assessment, the Inquiry Officer had properly gone through the report submitted by the Enforcement Officer and related documents. The

order was passed by the Assistant Provident Fund Commissioner after providing an adequate opportunity of hearing to the respondent to defend itself

and produce related documents for the purpose of assessment, but it failed to produce related documents. He contended that the Tribunal erroneously

came to the conclusion that the EPF & MP Act, 1952 is not applicable in case of respondent establishment without examining whether all its

employees including employees employed through contractors were entitled to the benefits of contributory provident fund or old age pension in

accordance with any scheme or rule framed under the EPF & MP Act, 1952 governing such benefits. He argued that the Tribunal also failed to

appreciate that no scheme was framed by the State Government providing provisions of contributory fund or old age pension in respect of employees working under respondent establishment.

4. On the other hand, learned counsel appearing for respondent submitted that there is no illegality in the order impugned passed by the Appellate

Tribunal. He submitted that Section 33 of the Bihar Agriculture & Rural Area Development Agency Act, 1978 clearly lays down that for carrying out

the purposes of this Act, the State Government may from time to time give to the Agency such general or special directions on matters of policy as it

thinks fit and the agency shall comply with such directions. As per Section 33 of the aforesaid Act, the establishment was directly under the control of

Government. He contended that the respondent herein was not liable to pay PF contribution as it was exempted from the ambit of the EPF & MP

Act, 1952 in view of Section 16(b) and (c).

5. I have heard learned counsel for the parties and perused the record.

6. The main point for consideration in the present case is as to whether the provisions of the EPF & MP Act, 1952 could apply to respondent

establishment or not.

7. The respondent establishment was created under the Bihar Agriculture & Rural Area Development Agency Act, 1978.

8. Section 33 of the Bihar Agriculture & Rural Area Development Agency Act, 1978 speaks that for carrying out the purposes of this Act, the State

Government may from time to time give to the Agency such general or special directions on matters of policy as it thinks fit and the agency shall

comply with such directions.

9. Section 16 of the EPF & MP Act, 1952, which provides that the provisions of the Act shall not apply in certain cases, reads as under :-

â??16. Act not to apply to certain establishments -

(1) This Act shall not apply â?"(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for

the time being in force in any State relating to co-operative societies employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled

to the benefit of contributory Provident Fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the

State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory

provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;

(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the

case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions, as may be specified in the

notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be

specified in the notification.â??

10. In view the provisions prescribed under Section 16 of the aforestated Act, it would be apparent that merely because an establishment falls under

the control of State Government, the same would not be excluded from the applicability of the Act. It is not the case of the respondent establishment

that its employees were entitled to be benefit of contributory provident fund or old age pension in accordance with any such scheme or rule framed by

the State Government. The establishment has also not been exempted by the Central Government by notification in official gazette either prospectively

or retrospectively from the operation of the EPF & MP Act, 1952. Under such circumstances, the Appellate Tribunal could not have given a finding

that the establishment is not liable to pay PF contribution as it was exempted from the ambit of EPF & MP Act, 1952. The findings arrived at by the

Appellate Tribunal are based on an erroneous appreciation of facts and law. There was nothing before the Tribunal on the basis of which it could have

come to the conclusion that there was any scheme or rule framed by the State Government whereby the employees of the respondent establishment

has been entitled to the benefits of contributory provident fund or old age pension.

11. In view of the discussions made above, impugned order dated 24.11.2009 passed in ATA No. 681 (3) of 2006 by the Presiding Officer, Employees

Provident Fund Appellate Tribunal, New Delhi cannot be sustained. Accordingly, it is set aside.

12. The writ petition stands allowed.

