
(2009) 04 JH CK 0027

In the Jharkhand High Court

Case No : Writ Petition (C) No. 928 of 2009

Chandra Mohan Gupta

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

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

Citation : (2009) 57 BLJR 2489 : (2009) 122 FLR 362 : (2011) 2 JCR 336

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Ananda Sen, for the Appellant; J.C. to G.P.-I and Banani Verma, for the Respondent

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present writ petition has been preferred mainly for the reason that because of order passed by Assistant Provident Fund Commissioner, Ranchi dated 23rd December, 2008 as well as the order passed at Annexure-5 dated 3rd February, 2009, without giving any opportunity of being heard to the petitioner, the order u/s 7A of the Employees Provident Fund and Miscellaneous Provision Act, 1952, and it is also submitted by learned Counsel for the petitioner that even an application has also been preferred on 2nd of January, 2009 for quashing and setting aside of the ex-parte order passed u/s 7A of the Act, 1952 but, the same has not yet been decided by the concerned respondent officer and hence, the orders at Annexures- 4 and 5, deserve to be quashed and set aside.

2. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, it appears that:

(i) Against the present petitioner an inquiry u/s 7A of the Act, 1952, was initiated. It also appears from the facts of the case that no personal notice is served to the present petitioner.

(ii) It also appears that no opportunity of being heard was ever given to the

present petitioner and Assistant Provident Fund Commissioner has never called out the present petitioner for hearing of the matter u/s 7A of the Act, 1952.

(iii) It also appears that the order has been passed on 2nd September, 2004 u/s 7A of the Act, 1952 but, the said order had never been served to the present petitioner.

(iv) It also appears that at much belated stage, the petitioner came to know about the order passed u/s 7A of the Act, 1952.

(v) It is submitted by the counsel for the petitioner that one power of attorney for the period running from 16th July, 2003 to 15th July, 2006 was already over and, thereafter, the same has not been extended. Thus, the present petitioner has nothing to do with the original owner, after July, 2006. An application was preferred for quashing and setting aside the ex-parte order as per the provision of Section 7B of the Act, 1952, the same has not yet been decided by the concerned respondent authorities only under the pretext that the same is not in a proper format. This is an error apparent on the face of the records. Whenever an application preferred for quashing and setting aside the ex-parte order, the heading may be of a review application, but, it ought to be treated as an application for quashing and setting aside the ex-parte order and if there is any delay, the same may be considered in accordance with law by the concerned respondent officer.

(vi) It also appears from the facts of the case that the present petitioner got the powers of attorney of the principal employer on two occasions, as stated in the memo of the petition. The first power of attorney was running from the period 24th March, 1999 to 23rd March, 2002 and second period of power of attorney was held by the present petitioner from principal employer, was 16th July, 2003 to 15th July, 2006, thereafter there is no further extension of the power of attorney by the principal employer to the petitioner.

(vii) It is also submitted by learned Counsel for the petitioner that in fact an application dated 2nd January, 2009 has been preferred by the principal employer for quashing and setting aside of the ex-parte order, the same is also pending before respondent No. 3. Petitioner has never been called by respondent No. 3 at all, nor any notice has been served personally upon the petitioner nor was an opportunity given to represent his case before respondent No. 3.

3. As a cumulative effect of the aforesaid facts and reasons, I hereby direct respondent No. 3 to hear and dispose of the application preferred by the petitioner dated 2nd January, 2009, which shall now be treated as an application for quashing ex-parte order. I hereby direct respondent No. 3 to hear the petitioner. Meanwhile, so far as at Annexures- 4 and 5 are concerned, they are made unenforceable. Petitioner will approach respondent No. 3 on 11th of May, 2009 at 10.30 a.m. and thereafter, respondent No. 3 will give his own time as per his own time table for hearing of the matter.

4. During the pendency of the hearing of the petitioner and till the conclusion is arrived at or decision is taken by respondent No. 3 against the petitioner, u/s 7A of the Act, 1952, no coercive action shall be taken by the respondents upon petitioner for the aforesaid subject matter. Annexures- 4 and 5 will also be kept in abeyance, till the final decision will be taken by respondent No. 3.
5. The petition is allowed to the aforesaid extent.