(2019) 08 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18232, 20619, 26007, 24771 Of 2012

Dharambir And Others APPELLANT

Vs

State of Haryana And Others RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Employees Provident Funds And Miscellaneous Provisions Act, 1952 — Section 7A
Indian Penal Code, 1860 — Section 196

Citation : (2019) 08 P&H CK 0050

Hon'ble Judges : Harsimran Singh Sethi, J

Bench : Single Bench

Advocate : Promila Nain, Ram Pal Verma, Safia Gupta, Deepak Balyan, Pardeep Solath

Final Decision : Dismissed

Judgement

Harsimran Singh Sethi, J

By this common order, four writ petitions, which involve the same question of law and similar facts, the details of which have been given in the heading, are being disposed of. For the sake of convenience, the facts are being extracted from CWP No.18232 of 2012.

Grievance which is being raised by the petitioners is that they had worked with respondent No.2-Chaudhary Devi Lal Sugal Mills, Gohana but the provident fund, which was deducted from their salary, has not been deposited with the authorities and therefore, they are suffering prejudice on this account.

In all the writ petitions, a Contractor, through whom petitioners were employed, has been arrayed as respondent No.4.

In the reply filed by the Contractor, he has stated that though the Contractor supplied the work force to the mill starting from the year 2004 onwards till 2012 but the mill authorities only paid the Contractor provident fund starting from the year 2009 onwards to be deposited with the concerned authorities, which he did.

On the other hand, learned counsel for respondent No.2 contends that the amount of EPF, which was liable to be deposited in respect of the services being rendered by the petitioners, was given to respondent No.4 i.e. Contractor from the year 2004 onwards, which has not deposited.

There exists a disputed question of fact which cannot be decided by this Court.

Petitioners have an efficacious remedy under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Petitioners can approach the Central Provident Fund Commissioner or any Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner or a Regional Provident Fund Commissioner under Section

7-A of the 1952 Act where, the amount which is due from an employer can be determined by the competent authority as provided under the said Act. Section 7-A of the said Act is reproduced for the ready reference:-

"7-A. Determination of moneys due from employers.-

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,-

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute, and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the 3[Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]

(2) The officer conducting the inquiry under sub-section

(1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:-

(a)enforcing the attendance of any person or examining him on oath;

(b)requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code.

3. No order shall be made under sub-section (1), unless 5[the employer concerned] is given a reasonable opportunity of representing his case. 6[(3A) Where the employer, employee or any other person required to attend the

inquiry under sub- section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry: Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.-Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.]]"

The authorities under the 1952 Act have been given power to enquire into and pass appropriate orders with regard to the deposit of the statutory amount under the provisions of 1952 Act, in case there is failure on the part of the employer to do so.

Faced with this situation, learned counsel for the petitioners states that she be allowed to withdraw the present writ petition with liberty to approach the authorities under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Counsel for the petitioners prays that the petitioners are pursuing this remedy for the last seven years and therefore, some time frame be prescribed for the authorities to decide the claim of the petitioners.

This Court has no apprehension that in case the petitioners approach the authorities under the 1952 Act, appropriate order will be passed by the competent authority at the earliest deciding the claim of the petitioners.

Keeping in view the above, the present writ petitions are dismissed as withdrawn with liberty as prayed for.

