(2016) 06 MP CK 0030

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7828 of 2012

Employees Provident Fund Organization APPELLANT

Vs

M/s Ambar Products Gwalior RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Constitution of India, 1950 — Article 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3)(b)

Citation : (2016) 3 CLR 133 : (2016) 150 FLR 1072 : (2016) LabLR 932 : (2016) LabLR 873 : (2016) LIC 4667 : (2016) 4 LLJ 217

Hon'ble Judges : Mr. Alok Aradhe and Anand Pathak, JJ.

Bench : Division Bench

Advocate : None, for the Appellant; Shri D.K. Agarwal, learned counsel, for the Respondent

Final Decision : Dismissed

Judgement

Alok Aradhe, J.—In this petition under Article 227 of the Constitution of India, the petitioner has assailed the validity of the order dated 25.8.2010 passed by the Employees'' Provident Fund Appellate Tribunal (hereinafter referred to as the "Appellate Tribunal"), by which the appeal preferred by the respondent has been allowed. In order to appreciate the petitioner''s challenge to the impugned order, few facts needs mention which are stated infra.

2. Respondent M/s Ambar Products Ltd. is a partnership firm which is engaged in the business of manufacturing confectionery, i.e., premium sweets and candy. The premises of the respondent were inspected on 14.2.2003 and on the basis of the inspection report, it was found by the authorities under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act") that the establishment of the respondent is covered under the provisions of the Act. Thereafter an enquiry under Section 7-A of the Act was initiated, thereupon the respondent raised an objection with regard to inclusion of names of its three partners in the list of employees. Thereafter the premises

were again got inspected on 25.12.2004. On 25.12.2004, 32 employees were found working in the establishment of the respondent, the list of which was prepared by the Enforcement Officer and a copy thereof was provided to the respondent. After affording an opportunity of hearing to the respondent, an order of assessment was passed on 20.09.2005 by which it was held that the establishment of the respondent was covered under the provisions of the Act for a period from 14.2.2003 to 30.11.2004. Being aggrieved, the respondent preferred an appeal which was allowed by the Appellate Tribunal vide impugned order dated 25.8.2010. In the aforesaid factual background, the petitioner has approached this Court.

3. None has appeared on behalf of the petitioner. However, from perusal of the writ petition, we find that the order passed by the Appellate Tribunal has been assailed on the ground that the same is contrary to the material on record and is illegal. It has been further submitted that the Appellate Tribunal grossly erred in holding that less than 20 employees were employed in the establishment of the respondent for the period in question. On the other hand, learned counsel for the respondent has submitted that the period in question was from 14.2.2003 to 30.11.2004 and while preparing the list, the names of three partners were also included which is not permissible and, therefore, the Appellate Tribunal has rightly set aside the order passed by the Assistant Commissioner. It is further submitted that the scope of this Court for interference in exercise of power under Article 227 of the Constitution of India is restricted and the order, therefore, does not call for any interference.

4. We have perused the record and have considered the submissions made by learned counsel for the respondent. From perusal of the order passed by the Assistant Commissioner, it is evident that the Assistant Commissioner has taken into account the strength of the employees as on 25.12.2004 in arriving at the finding that more than 20 employees were employed in the establishment of the respondent. It is pertinent to mention here that the scope of interference under Section 7-A of the Act was confined with regard to the period from 14.2.2003 to 30.11.2004. It is trite law that the partners of a partnership firm could not be treated as employees. In this connection reference may be made to decision of the Supreme Court in the case of Regional Director, ESIC v. Ramanuj Match Industries, 1985 (1) LLJ 69. In the instant case, the Appellate Tribunal on the basis of meticulous appreciation of material available on record has found that as on the date of inspection i.e. 14.2.2003, less than 20 employees were employed and the authority had included the names of three partners, which is impermissible in view of the aforesaid enunciation of law laid down by the Supreme Court. Even otherwise, for yet another reason we do not find any ground to interfere with the impugned order as the question whether for the period in question i.e. from 14.2.2003 to 30.11.2004 in the establishment of respondent less than 20 employees were employed, is a pure question of fact.

5. From the perusal of the impugned order, we find that the aforesaid finding has

been recorded by the Appellate Tribunal which, by no stretch of imagination, can be said to be perverse or based on no evidence. It is trite law that the jurisdiction of this Court of superintendence under Article 227 of the Constitution of India is entirely discretionary and supervisory in nature. The power under Article 227 of the Constitution of India cannot be exercised as a court of appeal and the same is exercised only with a view to keep the tribunals and the courts subordinate to it within the bounds of their authority. The power under Article 227 of the Constitution of India can be exercised where there is a patent perversity in the orders of tribunals or courts subordinate to it or where there has been gross and manifest failure of justice or basic principles of natural justice have been flouted. See, Shalini Shyam Shetty v. Rajendra Shankar Patil (2010) 8 SCC 329.

6. From the close scrutiny of the impugned order passed by the Appellate Tribunal, it is evident that it does not fall in any of the categories referred to in the preceding paragraph. The finding that on the relevant date, i.e. on 14.2.2003 less than 20 persons were employed in the establishment of the respondent is based on material available on record which cannot be said to be perverse and based on no evidence.

7. In view of the preceding analysis, no case for interference with the order of Appellate Tribunal in exercise of power of superintendence under Article 227 of the Constitution of India is made out. In the result, writ petition fails and is hereby dismissed.