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(2017) 05 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : 219 of 2017 MP No 01 of 2017 c of w OWP No 1294 of 2016 OWP No 787 of 2016

Harasis Singh APPELLANT

Vs

Union of India & Ors. RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

Citation : (2017) 05 J&K CK 0035

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : M.Y Parray, Tahir Majid Shamsi

Final Decision : Disposed Of

Judgement

1. The writ petition has been filed for the following reliefs:

I}. Writ of Certiorari, quashing the following orders;

Circular dated 15.07.2015 (ANNEXURE-A1)

Order No.66546/Manual/77/E8 dated 06.11.2015

(ANNEXURE-B)

Order No.66546/Manual/488/E8 dated 03.12.2015

(ANNEXURE-D)

Order No.42551/Cir/BAI/967/E8 dated 07.12.2015

(ANNEXURE-E)

Order No.80200/Policy/187/E8 dated 08.12.2015

(ANNEXURE-F)

Order No.66546/Manual/495/E8 dated 31.12.2015

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(ANNEXURE-G)

as the said circular and orders are bad, unconstitutional and not applicable to the petitioners.

II}. Writ of Mandamus, this Hon''ble Court be pleased to command the respondents not to act upon the impugned circular and

orders (ANNEXURE-A1, B,D, E, F and G). The respondents be further commanded to allow the participation of the petitioner in

the tender process without giving the provident fund code as prescribed in the impugned circular and orders.

III}. Writ of Mandamus, this Hon''ble Court be pleased to command the respondents to allow the petitioner to continue his business

as contractors in the respondent department without causing any hindrance or obstacle in any manner whatsoever so that the earning

of livelihood by the petitioner is ensures.

2. The issue involved in all these writ petitions (i.e. OWP Nos. 219/2017, 1294/2016 & 787/2016) stands covered in terms of order of this Court

dated 10th March, 2017 in OWP No.254/2017. Paragraph Nos. 9 to 17 whereof are reproduced as under:

9. It is the case of the petitioners that the provisions of Employees Provident Fund and Miscellaneous provisions Act, 1952, is not

applicable to them and they have given a representation for the same i.e. Annexure-""C"" and Annexure-""D"". In Paragraph No.18 of

the writ petition, it is stated by the petitioners that in response to their representation dated 25th November, 2015, the Union of India

sent a reply bearing No.66546/Manual/488/E8 dated 3rd December, 2015, which reads as under:

66546/Manual/488/E8

03 Dec 2015

MES Builders Association of India

807-808, Sahyog 58,

Nehru Place, New Delhi-110019

Coverage of building and construction workers (BACW) in the schemes framed under Employee''s Provident Funds

and Miscellaneous Provisions (EPF&MP) Act, 1952-req.

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1. Reference your letter No.MBAI/E-in-C/63/2015 dated 25 Nov 2015.

2. The mater was discussed with Joint Secretary in Shram Shakti Bhawan on 30 Nov 2015. He has stated the

following:

a. Date extension for compliance cannot be agreed to.

b. For getting PF Code number, a very simply application form is required to be uploaded which does not ask details of

10/20 labours. The PF Code number shall then be received by the contractor within 05 days.

c. After possessing the number, the process of PF deduction from wage and employer''s contribution etc. can take

place subject to satisfying conditions of number of labour employed etc.

d. The PF act 1952 is not applicable to State of J&K and in that State, PF instructions of JK shall be followed.

3. The above is for your information please.

Sd/-

(Bhagirathi Pani)

Director (Contracts)

For E-in-C

10. Despite such a specific reply from the intending Department, the petitioners still feel that their rights will be affected by the Act of

Parliament 1952, therefore, they have approached this Court by way of instant writ petition for the mandamus as above. The,

Contractors, however, are obliged to comply with the requirement of the Jammu and Kashmir Employees Provident Funds Scheme,

1961 and instructions therein. Despite the clarification it is pleaded in ground No. ""F"" that the authority is trying to invoke the

provisions of Employees Provident Fund and Miscellaneous Provisions Act 1952 Central Act, in so far as the State of Jammu and

Kashmir is concerned and, therefore, they are aggrieved. This plea appears to be based on a misconception even as per the

statement made in the writ affidavit.

11. Annexure-""E"" which has been already extracted above dated 3rd December, 2015, issued by the Authority makes it clear that

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Employees Provident Fund and Miscellaneous Provisions Act 1952, is not applicable to the State of Jammu and Kashmir whereas

the Employees Provident Funds Scheme of 1961 and instructions therein issued by the State of Jammu and Kashmir alone should be

followed. There appears to be no ambiguity.

12. In this view of the matter, the primary plea against the impugned Annexures issued by the various authorities may not be justified.

The provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952, will apply only in States other than the State

of Jammu and Kashmir and to that extent the petitioners cannot have any grievance as pleaded in the writ petition, and, therefore, the

mandamus for not to insist on the impugned circular has no legal basis and is rejected.

13. Mr. Shamas, learned ASGI, appearing for the respondents on instructions states that the provisions of Jammu and Kashmir

Employees Funds Scheme, 1961, issued by the Jammu and Kashmir State along with instructions contained therein alone would

apply in so far as the instant case is concerned and similarly situated persons. The statement of learned ASGI is recorded.

14. The next and primary grievance of the petitioners appears that there are certain daily wagers in different parts of Leh, who are

seasonal in nature and they do not have regular addresses, and, therefore, it is difficult for the petitioners/Contractors to identify them

and comply with the requirements of the Employees Provident Funds Scheme 1961, and the instructions contained therein.

15. The Employees Provident Funds Scheme of 1961 has an answer to this problem also under Rule No.27 as follows:

27. Exemption of a class of employees:

1.)The Commissioner may, by order and subject to such conditions as may be specified in the order, exempt from the

operation of all or any of the provisions of this Scheme, any class of employees to whom the Scheme applies:

Provided that such class of employees is entitled to benefits in the nature of provident fund, gratuity or old age pension

according to the rules of the factory or other establishment or businesses and

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such benefits separately or jointly are on

the whole not less favourable than the benefits provided under the Act and this Scheme.

2.) Where any class of employees is exempted as aforesaid, the employer shall in respect of such class of employees

maintain such account, submit such returns, provide such facilities for inspection, pay such inspection charge and invest

provident fund collections in such manner as the Government may direct.

3.)A class of employees, exempted under sub-paragraph (1) or the majority of employees constituting such class, may

by an application to the Commissioner, make a declaration that the class of employees, shall become members of the

Fund.

4.) No class of employees shall be granted exemption or permitted to apply not of exemption more than once on each

account.

16. Apparently, none of the petitioners/Contractors have approached the competent Authority in terms of the provisions of the

Employees Provident Funds Scheme, 1961, and instructions contained therein, therefore, the petitioners will be at liberty to approach

the competent authority in terms of the Employees Provident Funds Scheme,1961,and instructions contained therein, to seek

exemption of a Class of employees. If such a request is made, the authority shall consider it on its main merits and decide the same

expeditiously preferably within a period of four weeks from the date of receipt of copy of a representation when placed along with

this order. This will enable the petitioners/Contractors to know their position viz-a-viz the pending contracts and the ensuing contracts

as well.

17. Accordingly, the writ petition stands disposed of in the above terms.

3. In view of aforesaid decision rendered in OWP No.254/2017 (supra) by this Court, all these writ petitions (i.e. OWP Nos. 219/2017,

1294/2016 & 787/2016) stand disposed on the same analogy.

4. Registry to place a copy of this order on each petition.

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