

**(2016) 07 KAR CK 0074**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 37615 of 2016 (L-PF)

H.K. Nagendra

APPELLANT

Vs

Assistant Provident Fund Commissioner

RESPONDENT

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**Date of Decision :** 19-07-2016

**Acts Referred:**

Constitution of India, 1950 — Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

**Citation :** (2017) 2 CLR 114 : (2017) 152 FLR 878 : (2016) 6 KantLJ 609

**Hon'ble Judges :** Aravind Kumar, J.

**Bench :** Single Bench

**Advocate :** Sri Rajesh for Sri Harikrishna S. Holla, Advocates, for the Petitioner; Notice not ordered, for the Respondent Nos. 2 and 3; Sri B. Pramod, Advocate, for the Respondents No. 1

**Final Decision :** Partly Allowed

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## **Judgement**

Aravind Kumar, J. - Though matter is listed for preliminary hearing, by consent of learned Advocates, it is taken up for final disposal.

2. Petitioner has called in question order dated 27-6-2016 Annexure-D passed under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, "EPF Act") by first respondent where under damages payable by the Establishment M/s. Jupiter Consultancy Services has been quantified of which the petitioner is the Proprietor and it has been ordered that petitioner is liable to pay a sum of Rs. 3,30,839/-.

3. Perusal of the impugned order would indicate that notice came to be issued after initiating proceedings under Section 14-B of the EPF Act by the respondent enclosing therewith the statement showing the details of delayed payments made during the period June 2000 to August 2014 by the Establishment M/s. Jupiter Consultancy Services, which is undisputedly a covered establishment. For reasons best known, petitioner did not appear on all the dates of hearing, though intermittently either by himself or through his authorised representative he had

appeared. As such, the respondent-authority having noticed that the proceedings had been pending for the past 17 years and there being no other option, proceeded to adjudicate the notice dated 17-2-2015 and passed the impugned order fixing the liability on the petitioner to pay a sum of Rs. 3,30,839/- as afore stated. Aggrieved by this order, petitioner is before the Court.

4. It is the contention of Mr. Rajesh, learned Counsel appearing on behalf of Mr. Harikrishna S. Holla that the respondent-authority erred in not noticing Section 17-B of the EPF Act which clearly mandates that where any covered establishment is transferred, in such an event, the liability would be fastened on the transferor and transferee jointly and in the instant case, first respondent-authority by the impugned order, has fixed the liability on the transferee alone and as such, impugned order is liable to be set aside. He would also elaborate his contention by contending that impugned order is violative of principles of natural justice, since no opportunity was extended and as such, without availing the alternative remedy of filing an appeal as provided under Section 7-I of the EPF Act, petitioner has invoked the extraordinary jurisdiction of this Court. Hence, he prays for quashing of the impugned order.

5. Per contra, Sri B. Pramod, learned Counsel appearing for the respondent-authority would support the impugned order and contends that writ petition is liable to be dismissed on the ground of petitioner not having exhausted available alternate and efficacious remedy as provided under Section 7-1 of the EPF Act, inasmuch as, an order under Section 14-B is appealable order under Section 7-I. He would also draw attention of this Court to the finding recorded by the respondent-authority under the impugned order to buttress his argument that it does not suffer from any infirmity, inasmuch as no material was produced by the petitioner to establish that he was a transferee of the covered establishment. Hence, he seeks for rejection of the writ petition.

6. Having heard the learned Advocates appearing for parties and on perusal of the records, it would indicate that impugned order is passed under Section 14-B of the EPF Act, which undisputedly is an appealable order under Section 7-1. However, alternate remedy is no bar for exercise of jurisdiction under Article 226 of the Constitution of India, as held by the Apex Court in the following judgments :

(1) Harbanslal Sahnia and Another v. Indian Oil Corporation Limited and Others (2003) 2 SCC 107 :

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where

the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged (See *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others*, (1998) 8 SCC 1). The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

(2) *Dhampur Sugar Mills Limited v. State of Uttar Pradesh and Others* (2007) 8 SCC 338 :

"23. As to alternative remedy available to the writ petitioner, a finding has been recorded by the High Court in favour of the writ petitioner and the same has not been challenged by the State before us. Even otherwise, from the record, it is clear that the decision has been taken by the Government. Obviously in such cases, remedy of appeal cannot be termed as alternative" or "equally efficacious". Once a policy decision has been taken by the Government, filing of appeal is virtually from "Caesar to Caesar's wife", an "empty formality" or "futile attempt" The High Court was, therefore, right in overruling the preliminary objection raised by the respondents."

(3) *Shashi Gaurv NCT of Delhi and Others* (2001) 10 SCC 445.

"8. In this view of the matter, we are persuaded to take the view that under sub-section (3) of Section 8 of the Act, an appeal is provided against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary proceeding, but also against a termination, otherwise except, where the service itself comes to an end by efflux of time for which the employee was initially appointed. Therefore, we do not find any infirmity with the order of the High Court not entertaining the writ application in exercise of its discretion though we do not agree with the conclusion that availability of an alternative remedy ousts the jurisdiction of the Court under Article 226 of the Constitution."

7. Keeping the above principles in mind when the facts of the case are examined it would indicate that the impugned order is assailed on the ground of violation of principles of natural justice as well as on the ground that the impugned order is contrary to Section 17-B of the EPF Act.

8. Where the order under challenge is in violation of principles of natural justice, this Court can exercise power under Article 226 of the Constitution of India as held by Apex Court in *Harbanslal's* case referred to supra. In that view of the matter, contention raised by Sri B. Pramod, learned Counsel appearing for the respondent, cannot be accepted and it is hereby rejected.

9. Turning my attention to the facts on hand namely to the merits of the claim, it is noticed that though the petitioner was served with a notice by respondent-authority on 17-2-2015 as required under Section 14-B, for reasons best known, petitioner has not appeared on all the dates of hearing. Now and then, he has appeared, sought for adjournment and petitioner was also represented by his authorised representative. They did not place any material before the respondent-authority to establish as to when the covered establishment was transferred in favour of the petitioner. Placing of such material would have enabled the authorities to comply with provisions of Section 17-B. In the absence of such material being placed, no fault can be found with the order of the respondent-authority in fastening the liability of the covered establishment namely on the petitioner who is the Proprietor of the said establishment.

10. Be that as it may, petitioner herein is claiming to have taken over the covered establishment with effect from 1-2-2014 as per the agreement annexed to writ petition of even date, which is at Annexure-A. A perusal of the recitals in the said agreement, particularly paragraph 2, would clearly indicate that all statutory dues like PF, ESI, service tax up to 31-1-2014 would be borne by the transferors, namely the legal heirs of late Sri S. Sathyanarayana who transferred the covered establishment to petitioner herein. The alleged dues of the covered establishment relates to the period June 2000 to August 2014. It is also contended by Sri Rajesh that on taking over the covered establishment under the agreement dated 1-2-2014, necessary statutory forms have been filed before respondent-authorities. However, no such material is placed before this Court. In that view of the matter, it would suffice if the petitioner is directed to place all such material before the respondent-authority to enable the first respondent-authority to adjudicate the notice dated 17-2-2015 afresh and as such impugned order is liable to be quashed.

11. Since the proceedings have been delayed before the first respondent-authority which undisputedly is at the instance of the petitioner and in order to infuse seriousness on the petitioner, it would be necessary to mulct him with costs so that petitioner would not protract or delay the proceedings before the first respondent-authority. Hence, the following :

Order

(i) Writ petition is hereby allowed. Order dated 27-6-2016 Annexure-D passed by the first respondent is hereby quashed.

(ii) Proceeding is remitted back to the first respondent-authority for adjudication afresh and petitioner would be at liberty to place all material before the first respondent-authority including the memorandum of agreement dated 1-2-2014 and respondent-authority shall take note of the same and proceed to adjudicate the notice dated 17-2-2015 on merits and in accordance with law.

(iii) Petitioner shall deposit a sum of Rs. 7,500/- as compensatory costs for the respondent, before the first respondent-authority and irrespective of the outcome

of the adjudication, it is made clear that the first respondent-authority is not required to refund the said amount.