(2008) 06 J&K CK 0017

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 443 Of 2002

Hotel Jammu International APPELLANT

Vs

State of J&K and Ors. RESPONDENT

Date of Decision : 30-06-2008

Acts Referred:

Jammu and Kashmir Employees Provident Funds and Miscellaneous Provisions Act, 1961 — Section 8A, 8A(3)

Citation : (2009) 1 JKJ 523 : (2009) 1 KashLJ 136 : (2008) 4 SCT 686 : (2008) 2 SriLJ 707

Hon'ble Judges : J.P.Singh, J

Bench : Single Bench

Advocate : P.C.Sharma, Amrit Sarin, Advocates appearing for the Parties

Judgement

Calling in question Deputy Provident Fund Commissioner's Communication No. DPFC/J/C/711/88283 dated 24.05.2001 requiring it to deposit

Rs.2,34,000 as Provident Fund Contributions, Hotel International Jammu, the petitioner, has filed this writ petition seeking its quashing besides

issuance of a direction to the respondents to consider its representation which it had made on June 19, 2001 before requiring it to pay provident

fund contributions.

Notice issued by Deputy Provident Fund Commissioner, Jammu has been assailed by the petitioner on the ground that in the absence of any

inspection of the Hotel having been carried out and opportunity of hearing provided to it, issuance of notice impugned in the writ petition was

unsustainable. Petitioner says that it had deposited its statutory Provident Fund Contributions until November, 1999 when the Hotel became

nonfunctional because of the additions and alterations which were to be carried out so as to renovate the Hotel for its proper functioning, And

because of the nonfunctioning of the Hotel, most of the employees had left the job. Petitioner's further grievance projected in the writ petition is that

representation made by it in this behalf was not considered by the respondents before issuing the impugned notice directing it to pay the provident

fund contributions.

Grievance projected in the writ petition, in nutshell, therefore, is that the Deputy Provident Fund Commissioner, Jammu had erred in issuing the

impugned Notice without considering its representation, thereby depriving it of its statutory right to seek consideration of its representation.

Case set up by the respondents in their objections is that despite issuance of several Notices to deposit the statutory contributions, the petitioner

had failed to comply with the statutory requirement leaving no other option with them except to issue the impugned notice. Admitting receipt of

petitioner's letter No. HJI/274/Adm/20012002 of June 19, 2001, it is stated that no action had been taken on the letter because a final Notice for

deposit of statutory contributions had already been issued to the petitioner.

I have heard learned counsel for the parties, considered their submissions and perused the provisions of the Jammu and Kashmir Employees'

Provident Funds [And Miscellaneous provisions] Act, 1961 (hereinafter to be referred as the ""Provident Funds Act"") and the Scheme framed

thereunder.

Section 8A of the Act deals with Determination of moneys due from employers. In terms of this Section any officer authorized by the Government

in this behalf may determine the amount due from any employer under the provisions of this Act or the Scheme framed thereunder, and may for this

purpose conduct such enquiry as may be deemed necessary.

Section 8A(3) of the Provident Funds Act, provides that before determining the amount due from any employer, a reasonable opportunity of

representing its case is required to be given to the employer. This Section, for facility of reference, reads thus:

[8A. determination of moneys due from employers. (l) Any officer authorized by the Government in this behalf may, by order, determine the

amount due from any employer under any provision of this Act or the Scheme and for this purpose may conduct such inquiry as he may deem necessary.

(2) The officer while holding any inquiry under this section shall have the powers as are vested in a court under the Code of Civil Procedure,

Samvat 1977, 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 examination of witness, 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 Ranbir Penal Code, Samvat 1989.

(3) No order determining the amounts due from any employer shall be made under subsection (1) unless the employer is given a reasonable

opportunity of representing his case.

(4) An order made under this section shall be final and shall not be question in any court of law.

Perusal of the above extracted provision of the Provident Funds Act, demonstrates that before determining the amount due from the employer, the

authorized officer of the Government is required, under law, to afford it a reasonable opportunity of representing its case.

It, therefore, requires to be ascertained from the records which had been made available by respondents' counsel, as to whether or not any such

reasonable opportunity had been given by the respondents to the petitioner before determining the amount payable by it.

Office noting of the respondents indicate that Deputy Provident Fund Commissioner had on May 19, 2001, recorded in his minutes of the

proceedings reminding its Provident Fund Inspector, to conduct the inspection of the petitioner concern. This inspection, however, does not

appear to have been conducted as is evident from the office note recorded on January 14, 2002. Without conducting the inspection and providing

any opportunity still less reasonable opportunity in terms of Section 8A (3) of the Act, to the petitioner, the Deputy Provident Fund Commissioner

had in terms of its noting of January 16, 2002, directed the issuance of a final Notice to the petitioner to deposit the amount.

It further appears from the records that despite receipt of petitioner's Communication of June 19, 2001, its case does not appear to have been

considered because the respondents had not stopped their process of issuing notices for recovery of the amount which had been determined

earlier, though without providing any opportunity to represent its case, to the petitioner.

Respondents are, accordingly, found to have violated the mandate of Section 8A(3) of the Provident Funds Act, in not providing reasonable

opportunity of hearing to the petitioner before determining the amount payable by it as Provident Fund Contributions.

Communication No. DPFC/J/C/711/88283 dated 24.05.2001 issued by Deputy Provident Funds Commissioner directing the petitioner to deposit

Rs. 2,34,000 as Provident Fund Contributions thus becomes unsustainable.

This writ petition, therefore, succeeds. It is, accordingly, allowed. Deputy Provident Funds Commissioner, Jammu's Communication No.

DPFC/J/C/711/88283 dated 24.05.2001 is, accordingly, quashed and a direction is issued to the respondents to comply with the provisions of

Section 8A(3) of the Act before proceeding in the matter to recover the moneys which may be due from the petitioner under the Provident Funds

Act, and Scheme framed thereunder.