(2008) 09 JH CK 0028

In the Jharkhand High Court

Jagarnath Mishra College APPELLANT

Vs

Regional Provident Fund Commissioner and Others RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7, 7A, 7B

Citation : (2008) 4 JCR 614

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

R.R. Prasad, J.—This writ application has been filed for issuance of a writ in the nature of. certiorari for quashing the warrant of attachment (Annexure-12) issued by the Regional Provident Fund Commissioner-II-cum-Recovery Officer, Ranchi, whereby the fees/dues receivable by the College-Authority from the students/parents of wards/guardian of students were attached in exercise of power u/s 8-B to 8-C of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) In order to recover a sum of Rs. 28,21,829/-due from the management of M/s. Jagarnath Mishra College, Chalnpur, Daltonganj, Palamau.

2. The case of the petltioner-Jagarnath Mishra College, Chalnpur, Daltonganj, Palamau is that it is an affiliated College under the Jharkhand Intermediate Academic Council and has been engaged in providing education to the students upto intermediate and it is being managed by Jagarnath Mishra Siksha Vikas Samiti, a registered Society. Teaching staffs in the college have been appointed on an ad hoc basis who have been rendering their services on honorarium basis without getting any salary and similar is the case with non-teaching staffs and that it does not get donation from any corner nor does get any kind of aid and as such it has got a very meager fund to run the college which is received/collected by way of fees, still a proceeding for fixation of dues towards Employees Provident Fund was initiated in the year 1992-93. However, that was dropped when the entire facts were placed before the Provident Fund Authorities.

Subsequently, in the year 2001, under the direction of the Secretary, Jharkhand Vidhan Sabha, all the records and attendance register of the college were deposited in the office of B.D.O., Chainpur, Palamau. Thereafter, in the year 2002, the Provident Fund Commissioner again initiated a proceeding under the provision of the said Act, whereby the College-Authority was asked to submit various records which were immediately replied with that those records were not available in the college, rather it is lying with the Deputy Commissioner, Palamau. Thereupon a letter dated 24.5.2004 (Annexure-5) was written to the Deputy Commissioner, Palamau requesting therein to return the documents so that the same be shown to the Authority of the Provident Fund, but unfortunately, it was not returned to the petitioner and thereby it could not be placed before the Authority of the Provident Fund. Still an order was passed on 31.3.2004 (Annexure8) by the Assistant Provident Fund Commissioner, Ranchi in terms of Section 7-A of the said Act raising a demand of Rs. 22,27,358/- for the period from 4/87 to 12/2002 and further an amount of Rs. 6,10,664/- as an interest over the said amount. Thereupon notice of the demand dated 30.4.2004 (An-nexure-9) was issued showing outstanding dues to the extent of Rs. 28,38,022/-. On getting said demand notice, the petitioner filed a review application u/s 7 of the said Act on 25.5.2004 (Annexure-11), which was never heard and still the attachment notice (Annexure-12) dated 7.8.2007 was issued, whereby the fees/dues receivable by the College-Authority was attached in order to recover the amount of Rs. 28.21,829/-.

3. Being aggrieved with that order, the petitioner has preferred this writ application.

4. A counter affidavit has been filed on behalf of the Regional Provident Fund Commissioner, Ranchi stating therein that the petitioner?establishment is covered under the said Act w.e.f. 4.3.1987 and was allotted Provident Fund Code No. III-5565 for compliance of the provisions of the said Act, but the college failed to report compliance under the said Act and hence a proceeding u/s 7A of the said Act was initiated in the year 1993, but none appeared with the relevant records and hence it remained pending for quite a long time. However, in the year 2002, a proceeding was initiated for the period from 4/1989 to 12/2002 and that proceeding got adjourned at several occasions on account of non-production of the wage register as well as the balance sheet and, therefore, there was no option left with the Assessing Officer but to assess the Provident Fund on the basis of the minimum wages and thereafter the demand notice was raised which, in the facts and circumstances, appears to be quite justified. It was also stated that the review application has already been rejected in the year 2004, as the same was not maintainable on account of non-fulfilling the pre-condition as laid down u/s 7-B of the said Act and the said order was communicated to the petitioner under Letter No. 1695 dated 7.7.2004 (Annexure-A of the counter affidavit).

5. Having heard learned Counsel appearing for the parties, it does appear that it

is the case of the petitioner that the teaching and non-teaching staffs were never paid their regular salaries, as the petitioner - Institution was not in a position to pay them salary and hence both, teaching and non-teaching staffs, were rendering, their services on honorarium basis. However, when the proceeding was initiated and the petitioner was asked to submit the relevant records, it was communicated that those records have been seized by the Authority of the District Administration, Palamau and thereupon in absence of the relevant records, order was passed under Annexure-8 in terms of Section 7-A of the said Act fixing the liability of Rs. 28,38,022/- assuming the wages of the teaching and non-teaching staffs the same as that of the persons getting minimum wages.

6. Being aggrieved with that order, a review application in terms of Section 7-B of the said Act was filed which, as per the counter affidavit, has been rejected vide order dated 7.7.2004, as contained in Annexure-A, on the ground that the review application does not satisfy the pre-condition laid down u/s 7-B of the said Act which stipulates that the review application would be entertained if-

(a) Discovery of new and important matter or evidence which was not within the knowledge of the employer or could not be produced by him at the time when the order was made even after exercise of due diligence.

(b) A mistake or error apparent on the face of the records.

7. But while rejecting the review application, the Reviewing Officer has acknowledged the fact that the stand had been taken by the petitioner before the Assessing Officer that the relevant documents have been seized but as the seizure list showing seizure of those documents could not be produced, order was passed making assessment of the liability on the basis of the minimum wages. It has also been noted that in the review proceeding also no such document, which according to the petitioner was seized by the District Administration, was produced, rather only an application seems to have been sent before the Deputy Commissioner, Palamau for returning the documents and as such it was held that the review application does not fulfill pre-condition, but this finding in view of the acknowledgment of the fact that the documents had been lying with the Authority of District Administration and even the step was taken for its retrieval, is quite erroneous, as in the circumstances it can be said that in spite of due diligence, said documents could not be produced either before the Assessing Officer or even before the Reviewing Authority.

8. Hence the order, as contained in Memo No. 1695 dated 7.7.2004 (Annexure-A) and also order, as contained in Memo No. 760 dated 7.8.2007 (Annexure-12), whereby the fees/dues had been attached. are set aside.

9. The matter is remitted back before the Reviewing Authority where the petitioner by procuring all those documents, which according to him, have been seized by the District Administration, Palamau will produce within three months from today so that the matter under review be decided afresh by the Reviewing Officer within a reasonable period of time.

10. It is made clear that if the petitioner does not produce the documents within time as stipulated hereinabove, the Reviewing Officer would be at liberty to pass order as he deems fit and proper. With this observation, this writ application stands disposed of.

