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In the Karnataka High Court

Case No : Writ Petition Nos. 43552 of 43570 of 2011 (L-PF)

K. Jayamma APPELLANT

Vs

Sri Ganapathi Urban Co-Operative Bank Limited RESPONDENT

Date of Decision : 30-06-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 151 FLR 1053 : (2016) 6 KantLJ 139 : (2017) 1 SCT 590

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Sri J. Kanikaraj, Advocate, for the Petitioners; Sri N.S. Narasimha Swamy, Advocate, for the Respondents No. 1; Sri Pundikai Eshwara Bhat, Advocates, for the Respondent No. 2

Final Decision : Allowed

Judgement

Aravind Kumar, J.—Petitioners have called in question order dated 16-8-2010, Annexure-A, passed by second respondent-Organisation where under Enforcement Officer of second respondent-Organisation having visited the first respondent-Bank on 13-8-2010 is said to have concluded that first respondent is an "industry" having employed 23 persons as on 1-1-2006 and as such, it came to be held that first respondent-Bank is to be covered under the provisions of Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as ''EPF Act'' for short).

2. I have heard the arguments of Sri J. Kanikaraju, learned Counsel appearing for petitioner, Sri N.S. Narasimha Swamy and Sri Pundikai Eshwar Bhat, learned Counsels appearing for respondents 1 and 2 respectively. Perused the records.

3. The short point that arises for consideration in these writ petitions is:

"Whether impugned order dated 16-8-2010 directing the coverage of petitioners-employees working in first respondent-Bank and directing the Bank to transfer amounts in private provident fund to be credited to the account of EPF A/c No. 1,

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is sustainable or not?"

4. It is the grievance of petitioners that they are all working in first respondent-Bank for past several years and first respondent-Bank is a Co-operative Bank registered under the Karnataka Co-operative Societies Act, 1959 and is engaged in banking activities and they are being paid Basic Wages, Dearness Allowances besides other allowances like 1IRA, Medical Allowance, etc., including festival, house and vehicle advance as part of employment provisions. It is further contended that first respondent-Bank was not coverable under provisions of EPF Act by virtue of number of employees being less than 50 and as such, respondent-Bank used to deduct an amount equivalent to provident fund contributions from their salaries each month and so also contributing an equivalent amount as employer''s share of contribution and was depositing the said amount under the Karlpavruksha Deposit Scheme (KVD) in District Central Co-operative Bank (DCC), which was earning interest ranging from 8.5% to 9.5% p.a., which interest was also compounded and net yield was much higher than the declared rate of interest of DCC Bank. It is also contended that on an average the number of employees of first respondent-Bank was around 15 to 16 and with effect from 1-1-2006 the number of employees was 23. Second respondent-Establishment Officer visited first respondent-Bank during August 2010 and on verification of records and register maintained by first respondent-Bank, has brought the establishment under coverage of EPF Act and Scheme by allotting the employees code number and coverage has been extended from 1-1-2006 on the ground that Bank had employed 23 persons as on 1-1-2006.

5. The contention of petitioners are two fold, namely: (i) that provisions of EPF Act is not applicable to first respondent-Bank in view of Section 16(1)(a) of the Act; and (ii) even otherwise, salaries which are drawn by petitioners is more than Rs. 6,500/- per month and as such, they would fall under Paragraph 2(f) of Employees'' Provident Funds Scheme, 1952 and they would be "excluded employee" as defined under Employees'' Provident Funds Scheme, 1952 (hereinafter referred to as ''Scheme'' for short) and it is also contended that impugned order bringing first respondent-Bank for coverage was without notice and hearing first respondent-Bank which was to the prejudice of petitioners. As such, learned Counsel for petitioners seeks for quashing of the impugned order.

6. Per contra, Sri Pundikai Eshwara Bhat, learned Counsel appearing for second respondent by defending the impugned order would submit that first respondent-Bank would fall within Section 1(3)(b) of the EPF Act, inasmuch as, with effect from 1-1-2006 the strength of the employees in first respondent-Bank having crossed beyond 20, said establishment is required to be covered under EPF Act. On account of non-intimation of this fact to second respondent-Organisation, Enforcement Authorities of second respondent have visited first respondent-Bank and on verification of records, had found that strength of the employees of first respondent-Bank was exceeding more than 20 and as such, it is brought under coverage. He would also submit that impugned order would fall within Section 7-

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A of the Act and it is an appealable order and as such, writ petitions are not maintainable.

7. Having heard the learned Advocates appearing for parties and on perusal of records this Court finds that issue of maintainability of writ petition has to be dealt with at the first instance since it goes to root of the matter. Availability of alternate remedy per se by itself is not a ground on which this Court can refuse to entertain the writ petition under Article 226 of Constitution of India. However, non-availment of alternate remedy available under the statute would act as a bar for this Court to exercise extraordinary jurisdiction vested under Article 226 of Constitution of India.

8. Apex Court has repeatedly held that availability of alternate remedy is not a bar for exercise of jurisdiction under Article 226 of Constitution of India. For the said proposition following judgments can be looked up:

(i) 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 the 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 is challenged. (See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others, AIR 1999 SC 22). The present case attracts applicability of the 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."

(ii) Shashi Gaur v. 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 Authority, but also against 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

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Constitution."

(iii) State of Uttar Pradesh and Others v. M/s. Indian Hume Pipe Company Limited, AIR 1977 SC 1132.

"4. Lastly, it was feebly argued by Mr. Manchanda that the High Court ought not to have entertained the writ petition and should have allowed the assessee to avail of the remedies provided to him under the Uttar Pradesh Trade Tax Act, 1948 particularly when questions of fact had to be determined. In the instant case, the question as to what is the true connotation of the words "sanitary fittings" and whether the hume pipes manufactured and sold by the respondent were sanitary fittings within the meaning of that expression was a question of law and since the entire material on lire basis of which this question could be determined was placed before the Sales Tax Officer and it pointed in one and only one direction, namely, that the hume pipes were not sanitary fittings and there was nothing to show otherwise, the High Court was justified in entertaining the writ petition. Moreover, there is no rule of law that the High Court should not entertain a writ petition where an alternative remedy is available to a party. It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably or perversely, it is settled practise of this Court not to interfere with the exercise of discretion by the High Court. The High Court in the present case entertained the writ petition and decided the question of law arising in it and in our opinion rightly. In these circumstances, therefore, we would not be justified in the interest of justice in interfering in our jurisdiction under Article 136 of the Constitution of India to quash the order of the High Court merely on this ground after having found that the order is legally correct. We are, therefore, unable to accept this contention."

9. In the instant case, it is noticed that writ petitioners are the employees of first respondent-Bank. Their grievance is that even if the strength of employees in first respondent-Bank exceeds 20, as indicated under Section 1(3)(b) of the Act, even then they would fall within the definition of "excluded employee" as indicated under Para 2(f) of EPF Scheme. This aspect having not been considered under the impugned order, has resulted in this Court entertaining these writ petitions by issuing Rule nisi on 11-2-2013. Three (3) years have lapsed, matter is still pending before this Court. Hence, having entertained these writ petitions after issuing Rule nisi, at this stage, if petitioners are made to avail alternate remedy as available under Section 7-1 of EPF Act, it would be too harsh as that would not be appropriate course for this Court to adopt. In that view of the matter, this Court is of the considered view that availability of an alternate remedy would not bar this Court to exercise extraordinary jurisdiction vested under Article 226 of Constitution of India. Hence, issue regarding maintainability raised by learned Counsel appearing for second respondent is hereby rejected.

10. Now turning my attention to the core issue as to whether impugned order can be sustained/quashed, it requires to be noticed that first respondent-Bank was not notified by second respondent-Organisation before ordering for coverage

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of employees working in first respondent-Bank. In other words, without furnishing the report of the Enforcement Officers or without hearing first respondent-Bank or petitioners, impugned order has been passed. It is no doubt true that petitioners must have vested right under the EPF Act to contend that they were required to be heard, even otherwise, impugned order would indicate that first respondent-establishment has not been heard before impugned order came to be passed. That apart, impugned order also does not indicate as to whether exemption clause of Section 16 or exclusion clause as defined under Para 2(f) of EPF Scheme is applicable or not. Impugned order also does not indicate as to whether this aspect has been considered by second respondent-Organisation. As such, on these grounds, impugned order cannot be sustained.

11. In the light of afore stated discussion, this Court is of the considered view that impugned order is liable to be quashed. Hence, I proceed to pass the following:

ORDER

(i) Writ petitions are hereby allowed.

(ii) Order dated 16-8-2010, Annexure-A, is hereby quashed.

(iii) Matter is remitted back to second respondent-Organisation for adjudication afresh, who shall after hearing first respondent-Bank pass orders on merits and in accordance with law keeping in mind the observations made herein above.

(iv) Since these writ petitions are pending before this Court nearly more than 5 years, it would be appropriate to fix the date of hearing as agreed to by the learned Advocates appearing for the parties to appear before second respondent-Organisation and accordingly, date of hearing is fixed on 20-7-2016 at 3.00 p.m.

(v) It is made clear that no fresh notice is required to be issued by second respondent-Organisation and in the event first respondent-Bank were to succeed, it would be at liberty to make an application before second respondent-Organisation for refund of amount, which has been collected and on such prayer being made, second respondent shall consider the same on merits and in accordance with law.

12. Ordered accordingly.

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