
(2015) 12 OHC CK 0042
In the Orissa High Court
Case No : W.P.(C) No. 8577 of 2008

Kala Vikash Kendra

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 12 OHC CK 0042

Hon'ble Judges : S.N. Prasad, J.

Bench : Single Bench

Advocate : Nirmal Ch. Mohanty, C.R. Satpathy, Samareswar Mohanty and N.C. Mohanty, for the Appellant; S.D. Das Advocate, H.S. Satapathy, D.R. Bhokta, A.N. Sahu, D. Mohanty, M. Panda, N. Bisoi, M.M. Swain, N. Afreen, Sunita Biswal, Bimbisar Dash, P. Chuli, D. Lenka and D.S. Ray, for the Respondent

Final Decision : Disposed Off

Judgement

S.N. Prasad, J.—Petitioner being aggrieved with the order dated 30.4.2008 passed under section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, hereinafter referred to as the EPF Act, 1952 by the Assistant Provident Fund Commissioner, Odisha is before this Court on the ground that the petitioner has not been provided with opportunity to defend his case, hence there is violation of principle of natural justice.

2. Relevant documents have not been supplied to the petitioner. Calculation as contained in the order impugned which shows liability of the petitioner is without any reason since the entire calculation has been made only on the basis of 5 Accounts and other Account of the members of EPF Funds has not been taken into consideration and as such the amount is exorbitant.

3. Principle as contained in paras-34,35, 36 and 37 of the Employees Provident Funds Scheme, 1952, hereinafter referred to as EPF Scheme, 1952 has not been followed.

4. Learned counsel for the petitioner elaborating the argument has submitted that the petitioner has not been provided with opportunity to defend his case and if opportunity would have been provided this order would not have been passed. The petitioner unit has been brought under the purview of the EPF Act, 1952 by virtue of notification issued on 21.6.1982 but from perusal of the impugned order amount shown is for the period from 4/1980 to 7/2007 hence the amount prior to the coverage period of unit under the Act has been taken into consideration, as such the order is without jurisdiction on this ground.

5. While on the other hand learned counsel for the opposite parties has vehemently opposed the prayer of the petitioner on the ground that this writ petition is not maintainable since alternative remedy of appeal as provided under section 7-I of the EPF Act, 1952 as such this writ petition cannot be entertained under Article 226 of the Constitution of India on the ground of availability of alternative remedy of appeal.

6. Controverting this argument learned counsel for the petitioner has submitted that this writ petition will be maintainable under Article 226 of the Constitution of India because the petitioner has approached this Court for issuance of writ of certiorari for quashing the order passed by the authority under section 7A of the EPF Act, 1952 on the ground of violation of principle of natural justice and order is without jurisdiction and in this regard he placed reliance upon judgments of the Hon'ble Apex Court in the case of The State of Uttar Pradesh Vs. Mohammad Nooh, ; U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, ; Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, , Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, .

By placing reliance upon these judgments it has been argued by learned counsel for the petitioner that the writ petition is maintainable and it cannot be dismissed on the ground of availability of alternative remedy if there is violation of principles of natural justice or there is violation of any fundamental right or the order is without any jurisdiction.

7. According to the petitioner in this case there is violation of principle of natural justice because the petitioner has not been provided the relevant documents which was relevant for proper adjudication of the issue involved and not proving relevant documents goes to the root of the principle of natural justice and as such this writ petition cannot be dismissed on the ground of availability of alternative remedy.

8. Reverting this argument learned counsel for the opposite parties has submitted that there is no violation of principles of natural justice because the petitioner has been provided with all opportunity of being heard, notices have been issued by the competent authority, in pursuance to the said notice the petitioner through various representatives have put their appearance and filed detail reply which has been annexed to the writ petition giving all the replies parawise and thereafter the competent authority has adjourned the case for

several dates providing opportunity to the representatives of the petitioner unit to produce relevant documents and file written submission of notes, not only this the relevant documents have been filed, statements of office bearers of the petitioner unit have been recorded and thereafter order has been passed, hence it is incorrect to say that there is violation of principle of natural justice.

9. So far as contention of the petitioner that relevant document has not been supplied, it has been submitted by learned counsel for the opposite parties that all the documents have been supplied which was necessary to adjudicate the issue and now this point is being raised before this Court but never raised before the competent authority, rather no document has ever been demanded showing relevance of the documents, hence this point of the petitioner cannot be accepted at this stage because of the reason that if according to the petitioner relevant documents has not been supplied, it was the duty of the petitioner unit to make requisition in this regard for supply of the documents, but no such requisition has ever been made and in the writ jurisdiction this point is being argued which is not fit to be accepted.

10. It has been submitted by the learned counsel for the opposite parties that the contention raised by the petitioner that the EPF Act, 1952 has been implemented against the petitioner unit on 21.6.1982 but the assessment of liability made by the authority under section 7(A) of the EPF Act, 1952 is prior to 21.6.1982 which is evident from the order itself that the period of coverage starts from the month of April, 1980 (4/80 to 7/07) which has been controverted by the learned counsel for the opposite party by submitting that actually assessment has been made from the month of April, 1982 and in one place, in the impugned order, due to mistake it has been typed as 4/80 to 7/07 while in other parts of order it is referred as 4/82 to 7.07 as such the order is within the jurisdiction.

11. So far as contention of learned counsel for the petitioner that only 5 Accounts have been taken into consideration by the competent authority and none of other members of the petitioner unit was before the concerned authority, hence proper assessment of deduction has not been made by him.

Controverting this argument learned counsel for the opposite parties has submitted that 5 Accounts has only been taken into consideration on the basis of salary head of different wings of the college in which salary of the employees wing wise was used to be deposited and thereafter this is being disbursed to the individual employee, hence calculation of salary being wing wise has been taken into consideration as such there is no material difference even if salary of individual employees would have been taken into consideration by the authorities.

12. Further contention of learned counsel for the petitioner that provision of Paras-34,35,36 and 37 of the EPF Scheme, 1952 has not been followed. Reverting the statement advanced on behalf of the petitioner so far as paras-34,35,36 and 37 are concerned learned counsel for the opposite parties

submitted that the same is to be exercised by the employer but here in this case the employer himself has not complied the provision as contained in these paragraphs of the Scheme, hence there is no question of application of provisions as contained in para-37 because para-37 authorized the Commissioner to take decision on the basis of the decision taken by the employer as contained in paras-34,35 and 36 of the EPF Scheme, 1952.

13. Heard learned counsel for the parties and on perusal of the documents on record.

14. Preliminary objection regarding maintainability of the writ petition has been raised by the opposite parties by submitting that there is specific provision of appeal as provided under section 7-I of the EPF Act, 1952.

15. There is no dispute that High Court sitting under article 226 of the Constitution of India restrain themselves in exercising the extraordinary jurisdiction conferred upon it under Article 226 of the Constitution of India if there is availability of alternative remedy of appeal, but there is exception to this principle and if order having been passed in violation of principles of natural justice or in violation of fundamental rights or the order is without jurisdiction, the writ petition can be entertained.

In this case, petitioner's main case is that the authority has exceeded his jurisdiction by violating principle of natural justice by not providing adequate and sufficient opportunity of being heard and the order passed under Section 7A of the EPF Act, 1952 is without jurisdiction, hence writ is maintainable.

16. After considering rival submission of the parties it is evident from the impugned order that the petitioner has been provided opportunity of being heard since notices have been issued to him. Petitioner has put his appearance, filed show cause, submitted written note of submission, representative of the petitioner has appeared and recorded his statement and produced relevant documents, as such contention raised by the petitioner that there is violation of principle of natural justice cannot be accepted in view of the facts stated hereinabove.

17. So far as contention of the petitioner that the authorities have not provided relevant document which is also not fit to be accepted because of the reason that the petitioner during pendency of the proceeding had never sought for any document rather petitioner has submitted details show cause reply, statement of representative has been recorded, thereafter order has been passed.

It is settled that the authority is supposed to supply relevant document, but it is also settled that if the authorities are not supplying relevant documents which is necessary for adjudication, the person aggrieved is supposed to make demand of relevant documents showing relevance and even if the document has not been supplied then only it can be said that the aggrieved party has been deprived from adequate and sufficient opportunity of hearing due to non-supply of

documents.

This is not the case here, rather petitioner has appeared and produced relevant documents and thereafter order has been passed and as such in the writ court this argument cannot be accepted.

18. So far as the contention that there lack of jurisdiction of the competent authority and as such the writ petition is maintainable under Article 226 of the Constitution of India and it is settled that writ of certiorari can be issued even though there availability of alternative remedy of appeal if the order is without any jurisdiction.

In this regard, it has been argued on behalf of the petitioner that the period of assessment of liability is prior to the date when the petitioner unit being an educational institution has been brought into the purview of the EPF Act, 1952 as because according to the petitioner the educational institution has been brought under the purview of EPF Act, 1952 by virtue of notification dated 21.6.1982 but the assessment of liability has been made from the month of April 1980 to July 2007, however the same has been controverted by learned counsel appearing for the opposite party by submitting that actually period of coverage stands from the month of April 1982 and not from April 1980 but in one place in the impugned order due to mistake it has been typed as 4/80 to 7/07 while in other parts of the order it is 4/82 to 7/07, so period of coverage is from 4/82 to 7/07.

On this learned counsel for the petitioner submits that even assuming the submission of the learned counsel for opposite party as true then also the coverage period cannot be prior to 21.6.1982 the date of notification bringing educational institutions under the parameter of EPF Act, 1952 but here the coverage period starts from the month of April 1982 which is prior to 21.6.1982, hence the order passed by the opposite party is without jurisdiction and without any application of mind.

19. In order to assess the argument it is relevant to see the notification dated 21.6.1982 which has been issued by the Ministry of Labour, Government of India annexed as Annexure-A/1 annexed to the counter affidavit which is also contained in statute under the Employees Provident Funds Scheme, 1952 as contained in 3(b)(xcvi) having been inserted in the statute on 21.6.1982 by G.S.R. 591 which provides that the educational, scientific, research and training institutions specified in the notification of the Government of India in the Ministry of Labour, No. S.O.986, dated the 19th February, 1982 published in Part-II, Section 3, Sub-section(ii) of the Gazette of India dated the 6th March, 1982.

20. The EPF Scheme, 1952 has been promulgated in pursuance to the power conferred by section 5 of the EPF Act, 1952 and in pursuance to the said provision Central Government frames the following Employees Provident Funds Scheme, 1952 wherein at para-3(a) it has been provided which is being quoted:

"Subject to provisions of sections 16 and 17 of the Act, this Scheme shall apply

to all factories and other establishments to which the Act applies or is applied under Sub-section (3) or Sub-section (4) of section 1 or section 3 thereof: provided that the provisions of this scheme shall not apply to-

(b) Provisions of this Scheme shall-

(xcvi) as respects the educational, scientific, research and training institutions specified in the notification of the Government of India in the Ministry of Labour, No. S.O.986, dated the 19th February, 1982, published in Part-II, Section 3, Sub-section (ii) of the Gazette of India dated the 6th March, 1982."

Thus from perusal of the provision as contained in Para-3(a) of the EPF Scheme, 1952 the said scheme has been made applicable to all factories and other establishments to which the Act applies or is applied under Sub-section (3) or Sub-section (4) of section 1 or section 3 thereof.

21. Sub-section(b) of Section 3 speaks regarding applicability of the provision of the Scheme applicable to various employees working under various factories/units. Originally the educational, scientific, research and training institutions were not under the purview of the EPF Scheme, 1952 and the educational, scientific, research and training institutions have been brought under the pursuance of the EPF Scheme, 1952 by virtue of notification dated 21.6.1982 by adding educational, scientific, research and training institutions in the notification of the Government of India, Ministry of Labour, No. S.O. No. 986 dated 19.2.1982 published in Part-II, Section 3, Sub-section (ii) of the Gazette of India, dated 6.3.1982.

Thus it is evident that the educational, scientific, research and training institutions have been brought under the purview of the EPF Scheme, 1952 by virtue of notification dated 21.6.1982 and thereafter vide communication dated 24.8.1982, same has been communicated to all Members, Regional Committee, Employees Provident Fund, Orissa as is evident from Annexure-A/1 annexed to the counter affidavit.

22. In the light of this, it is to be seen as to whether calculation of the liability which has been made by the authority under Section 7A of the EPF Act, 1952 is after 21.6.1982 or prior to 21.6.1982.

If it is on or after 21.6.1982 certainly the authority is well within its jurisdiction to pass order but if it is prior to 21.6.1982 then the authority cannot be said to be well within its jurisdiction to fix liability prior to the date of notification dated 21.6.82.

23. From the rival submissions of the parties even if the period of coverage will be said to be from the month of April 1982 as submitted by the learned counsel for the opposite party then also the coverage period of assessment cannot be prior to 21.6.82 but from perusal of the order impugned dated 30.4.2008 it is evident that assessment has been made for the period 4/1982 to 7/2007 and accordingly liability has been fixed from the month 4/1982 till 7.2007.

24. Thus the authority while assessing liability has exceeded its jurisdiction in fixing liability before the date when the petitioner unit was not under coverage of the EPF Scheme, 1952 as contained under the provision Para-3(b)(xcvi), as such on this ground it is held that assessment made by the competent authority under section 7A is without any jurisdiction and hence applying the principle laid down by the Hon''ble Supreme Court in the case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others (supra) wherein at para 20 it has been held that earlier decision rendered by the Hon''ble Supreme Court with regard to maintainability of writ petition on account of availability of alternative remedy of appeal if the order is without jurisdiction, as good law and in the facts of this case as discussed in preceding paragraph, this writ petition is held to be maintainable, because of the reason that the authority under the EPF Act cannot impose liability unless covered under the Act and in this case petitioner unit has been covered under EPF Act only on 21.6.1982 hence liability can be fixed upon the petitioner unit on or after 21.6.82 and not before that but here the authority under the EPF Act exceeding his jurisdiction fixed the liability upon the petitioner even prior to 21.6.82 and it is settled that no authority can impose any liability under EPF Act unless covered; since the authority in the impugned order has fixed liability prior to 21.6.82 as such the order cannot be said to be under authority of law and consequently without jurisdiction.

25. In view of the fact that the authorities had exceeded its jurisdiction by fixing liability upon the petitioner unit even prior to coverage of the institution under the purview of the EPF Scheme, 1952 as stated hereinabove, order dated 30.4.2008 is held to be illegal and is accordingly quashed.

26. In the result, the matter is remitted before the competent authority to pass order in accordance with law within 10 weeks from the date of receipt of certified copy of this order.

27. The writ petition is accordingly disposed of with the direction and observation made above.