(1991) 12 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 1621 of 1991

K.P.A.K. Mahavidyalaya APPELLANT

Vs

Regional Provident Fund Commissioner and Others RESPONDENT

Date of Decision : 03-12-1991

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7A(2)

Citation : (1993) 3 LLJ 830 : (1993) 105 PLR 207

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : R.L. Chopra, for the Appellant; Ashok Aggarwal, Senior Advocate and Rajesh Bindal and Subhash Goyal, for the Respondent

Judgement

J.L. Gupta, J.—This order will dispose of Civil Writ Petitions Nos. 1621, 9854, 4854, 4863, 10231 and 10251 of 1991 and C.W.P. Nos. 6401 and 16272 of 1990. The facts as stated in C.W.P. No. 1621 of 1991 may be briefly noticed.

2. The petitioner is an educational institution and is getting aid from the State of Haryana. In accordance with the instructions issued by the Director of Secondary Education, the petitioner claims that dues towards the provident fund of the employees are being deposited regularly in the Central Co-operative Bank, Ambala City, and the deposits are hypothecated with respo-ndentNos. 2 and 3.

3. The provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"), were extended to the educational institutions, vide Notification, dated 6th March, 1982. the validity of this notification was challenged in a number of petitions filed under Article 32 of the Constitution in the Supreme Court of India. Vide orders dated 7th January, 1988, the Supreme Court dismissed these petitions and issued certain interim directions regarding payments that had fallen due from 1st March, 1982, to 1st February, 1988. It appears that after the disposal of these petitions, the petitioner was aware of its liability to deposit the amount of provident fund with

the Regional Provident Fund Commissioner (hereinafer referred to as "the Commissioner"). Vide its letter dated 11th February, 1989, the petitioner informed the Provident Fund Inspector, Ambala Cantonment, that the provident fund of the school is maintained under the dircciion of the Director of Secondary Education and is lying in the Central Co-operative Bank, Ambala City, in the names of the individual employees. By another letter of 11th January, 1990, the petitioner informed the Director of Secondary Education, Haryana (respondent No. 2), that the amount of provident fund standing in the account of the employees may be transferred to the Regional Provident Fund Commisioner. The petitioner wrote yet another letter of 15th June, 1990, pointing out that in the absence of any instructions from the Education Department, Haryana, the school is unable to take any action in the matter. The Commissioner was requested to take up the matter with the Director of Public Instruction, Haryana. It appears that no action was taken of on these communications. However, a notice dated 6th July, 1990, was sent by the Commissioner to the petitioner. In response to this notice, the petitioner reiterated the position as aforesaid and requested the Commissioner to communicate directly with the Education Department, Haryana. A copy of the letter dated 11th January, 1990, which the petitioner had addressed to the Director of School Education was also forwarded to the Commissioner. Finally, vide letter dated 16th November, 1990, the Commissioner conveyed the order (annexure P-5) calling upon the petitioner to deposit an amount of Rs. 2.42, 380.40 within 15 days failing which the same was to be recovered as arrears of land revenue. Aggrieved by this order the petitioner has approached this Court through the present petition.

4. A written statement has been filed only on behalf of respondent No. 1, viz., the Commissioner. Respondent Nos. 2 and 3, viz., the Director of Secondary School Education and the District Education Officer, have filed no reply. They have not even put in appearance at the time of hearing. In the written statement filed on behalf of respondent No. 1 it has been, inter alia, averred that the petitioner has produced no proof in support of its assertions that the provident fund of the school employees are being maintained under the direction of the Director 1 of Secondary Education. In reply to the petitioner''s assertion that during the proceedings u/s 7A of the Act "as it was prayed that it would be in the interest of things if respondent Nos.2 and 3 are made parties, but this] legal prayer of the petitioner was not accepted". It has been averred that "the date when the request was made as alleged for impleading respondents Nos. 2 and 3 as party to Section 7A proceedings has not been mentioned, it is for the ; petitioner to ensure compliance with the requirement of law so as to transfer the amount to the statutory fund which is lying in their bank''''.

5. On these pleadings, a two-fold contention has been raised by learned counsel for the petiioner. It has been contended that the petitioner had already deposited the requisite amount of money which was lying hypotheticated with the authorities in the Education Department and they cannot be forced to pay this money again as ; required under the impugned order. It has also been contended

that under the Act, the Commissioner is bound to hold an enquiry and he has failed to exercise the jurisdiction vested in him by not calling upon the Director of Education and other authorities to deposit the amount of money which has been deposited by the petitioner even prior to the issue of notice u/s 7A. According to learned counsel, due procedure has not been followed. The impugned order is vitiated. It has also been contended that, vide Notification dated 21st August, 1984, and 26th August, 1987, the appropriate Government had exempted the educational institutions from the purview of the Act. Accordingly, learned counsel contends that no demand could have been made from the petitioner. On behalf of the respondents, it has been pointed out that the petitioner had failed to furnish the requisite information regarding the law under which the Director of Education or any other authority had compelled the petitioner to deposit the amount of provident fund. It has been further submitted that even the details of amount deposited, their account numbers and other relevant information have not been furnished. In the absence of requisite particulars, it was not possible for the Commissioner to hold an inquiry and determine the liability of the petitioner. Furthermore, with reference to the Notifications issued on 21st August, 19 84, and 26th August, 1987, it has been pointed out that the petitioner did not qualify for the grant of exemption. On these pleas, the claim made on behalf of the petitioner has been controverted.

6. It is appropriate to notice the provisions of Section 7A of the Act. It provides as under: "7A. Determination of money due from emloyees.-

(1) The Central Provident Fund Commissioner, or any Deputy Provident Fund Commissioner may, by order, determine the amount due from any employer under any provision of this Act, the Scheme or the Family Pension Scheme, or the Insurance Scheme, as the case may be, and for this purpose may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under Sub-section (1) shall, for the purpose of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, 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 the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the pu- rpose of Section 196 of the Indian Penal Code.

(3) No order determining the amount due from any employer shall be made under Sub-section (1), unless the employer is given a reasonable opportunity of

representating his case.

(4) An ordermadeunderthis section shall be final and shall not be questioned in any Court of law."

7. A pcrsual of the provisions would show that the Commissioner is authorised to conduct "such inquiry as he may deem necessary" for the purpose of determining the applicability of the Act to an establishment and the amount, if any, due from any employer. Sub-section (2) shows that for the purpose of conducting the inquiry the Commissioner has the same powers as are vested in a Court under the Code of Civil Procedure. The Commisioner can enforce the attendance of any person, examine him on oath, require the discovery and production of documents, receive evidence on affidavit, and issue commissions for the examination of witnesses.

8. Such being the scope of the powers, I am of the view that in the circumstances of the present case, the Commissioner should have conducted an inquiry to find out as to whether or not the petitioner had actually made any deposit regarding the employees working in the institution. If the deposit had been made under the direction of the appropriate authority and such deposit was actually hypothecated with an authority of the Education Department, in the normal course of events, the petitioner could not have been compelled to make the deposits again. The Commissioner could have summoned the Director of Education or District Education Officer, to verify the facts, and thereafter proceeded to determine the liability of the petitioner. On a perusal of the pleadings of the parties, I find that the Commissioner has failed to conduct an inquiry as envisaged u/s 7A of the Act and as warranted by the facts and circumstances of the case. In such a situation, it is not possible to uphold the order determining the liability of the petitioner.

9. The Director of School/Secondary Education as also the District Education Officer have been impleaded as respondents. They have not put in appearance. They have not produced any evidence to show that the petitioner had not made the deposit as directed by the Department. Even the written statement has not been filed to controvert the averments made in the petition. In this situation, the averments made by the petitioner that the requisite deposit had been made and that money was lying deposited with the Central Co-operative Bank, Ambala City, appears to be prima facie correct. Under the provisions of the Act, the right to recover provident fund was with the Commissioner. The Director of education or the District Education Officer had no jurisdiction to keep or direct the petitioner to keep that money deposited with the appropriate bank, nor can the Education Department insist that money be hypothecated in its favour. In the circumstances of the case, it appears just and fair that respondent Nos. 2 and 3, Director of Secondary School Education or the District Education Officer, should transfer that money to the Regional Provident Fund Commissioner (Haryana) at Fari-dabad. Respondent Nos.2 and 3 are directed to: do the needful within two months of the receipt of copy of this order in their office.

10. Keeping in view the fact that respondent No. 1 had failed to conduct the inquiry as envisaged u/s 7A, I quash the impugned order by which respondent No. 1 had determined the laibility of the petitioner and direct the respondents to redetermine the amount after holding proper inquiry regarding the actual amount of money which the petitioner is liable to pay. The petitioner shall be given credit for the amount which has already been deposited in accordance with the instructions issued by the Education Department. During this enquiry, it will be open to the petitioner to lead evidence to show that he was under no liability to pay during the operation of Notifications dated 21st August, 1984, and 26th August, 1987. If it is found that the petitioner qualifies for exemption during the operation of the above notifications, the liability for this period shall not be enforced against the petitioner.

11. Accordingly, Civil Writ Petition Nos. 1621, 9854, 4854, 4863,9245, 102131 and 10251 of 1991 and C.W.P. Nos. 6401, 16272 of 1990 arc followed to the extent indicated above. The demands made in the respective cases are set aside. The matter is remitted to the Commisioner for appropriate orders. The Director of School/Secondary Education is directed to transfer the amounts of money deposited by the respective petitioners in favour of the Regional Provident Fund Commissioner (Haryana), at Faridabad, within two months after the receipt of a copy of this order. In the circumstances of the case, there will be no order as to costs.

