

(2009) 04 JH CK 0083
In the Jharkhand High Court

Laxmi Devi Shroff Adarsh Sanskrit College	APPELLANT
Vs	
The Regional Provident Fund Commissioner and Others	RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

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

Citation : (2009) 122 FLR 316 : (2009) 4 LLJ 730

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been instituted mainly for the reason that initially an exparte order was passed by respondent No. 3 under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter to be referred as "the Act, 1952"). As the order was exparte, an application was preferred by the present petitioner for quashing and setting aside the exparte order u/s 7-B of the Act, 1952. Thereafter, no decision has been taken upon this review application, preferred u/s 7-B of the Act, 1952 and directly an attachment order has been passed by respondent No. 3 dated October 10, 2007 (Annexure 10 to the memo of present petition). Two accrued rights vested in the present petitioner have been taken away; firstly the review application preferred by the petitioner u/s 7-B of the Act, 1952 ought to have been decided on merits and secondly right to prefer an appeal u/s 7-B of the Act, 1952 has also been taken away because no final order has been passed after review application has been preferred by the petition therefore, the order at Annexure 10 deserves to be quashed and set aside and matter may be remanded before respondent No. 3 for final decision on review application, preferred by the petitioner for quashing and setting aside the exparte order passed by respondent No. 3 under the Act, 1952.

2. I have heard learned Counsel appearing for the respondents, who has mainly submitted that the petitioner has not preferred the application in a proper format of review application and hence respondent No. 3 has not decided the same.

Likewise, the petitioner has not properly mentioned the Section under which the review application has been preferred and, thereafter, an order of attachment dated October 10, 2007 at Annexure 10 has been passed and, therefore, this writ petition deserves to be dismissed.

3. Having heard learned Counsel appearing for both the sides and looking to the facts and circumstances of the case:

(i) It appears that the proceedings under the provisions of the Act, 1952 were initiated by the concerned respondent authorities;

(ii) It appears that a decision was already arrived at by respondent No. 3 initially against which a review application was preferred by the present petitioner, alleging therein, that the same was an *exparte* order. Thus, his application is falling u/s 7-B of the Act, 1952;

(iii) It also appears that this application has not been decided and no final order has been passed upon this application, preferred by the present petitioner, which is falling under the compass of Section 7-B of the Act}, 1952;

(iv) It appears that without deciding the application, preferred u/s 7-B of the Act, 1952, a warrant of attachment has been issued by respondent No. 3 dated October 10, 2007 (Annexure 10 to the memo of present petition).

(v) It appears that this is an error apparent on the face of the record.

(vi) It appears that the review application preferred by the present petitioner, though it may not be in a proper format, looking to the pith and substance of that application or looking to the contents of that application, an experienced officer, who is absolutely working under the Act, 1952, should have appreciated that basically the application preferred by the petitioner is falling within the four corners of Section 7-B of the Act, 1952, which is for nothing but for review of the *exparte* order. He ought not to have brushed aside this application without deciding the same. Such a practice adopted by respondent No. 3 deserves to be deprecated.

(vii) It also appears that the review application, in fact, is pending, but, the orders have been passed for freezing of the bank account by way of attachment order. Even there is one more order at Annexure 15 to the memo of present petition dated June 4, 2008.

4. In view of the aforesaid facts, I hereby direct respondent No. 3 to hear and decide the review application, preferred by the petitioner u/s 7-B of the Act, 1952 after giving opportunity of being heard to the petitioner. The petitioner will approach respondent No. 3 on May 4, 2009 and, thereafter, respondent No. 3 will give him any suitable time for taking decision on the review application. Till disposal of the review application, no coercive action shall be initiated against the present petitioner.

5. This writ petition is, thus, allowed to the aforesaid extent.