
(2009) 01 AHC CK 0151
In the Allahabad High Court

Mahabir Singh Inter College and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

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

Citation : (2009) 2 LLJ 655

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties.

2. This writ petition arises out of proceedings u/s 7-A of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (E.P.F. Act) in respect of Mahabir Singh Inter College, Ghaziabad (hereinafter referred to as "the College") run and managed by petitioner, Committee of Management. Coverage notice was given to the College by E.P.F. Authorities for the period from January 1, 1996 to May 31, 2003 and it was directed to report compliance in the prescribed manner. The college did not accept the coverage notice and filed objection to the effect that it never employed 22 employees as stated in the coverage notice. The college was allotted Code No. UP/21234. The objections were filed by the college and thereupon proceedings were initiated u/s 7-A of the E.P.F. Act. In reply to further notice after registration of the case, it was stated on behalf of the College that it had not deducted any P.F. contribution from the salaries of its employees. The further case of the College was that at the relevant time there were two separate independent institutions, one was a Junior High School and the other a Higher Secondary School and both were managed by different societies, hence both could not be clubbed, together. Ultimately matter u/s 7-A of the Act was decided by Regional Provident Fund (R.P.F.) Commissioner-II, Meerut through order dated (February 27, 2004, copy of which is Annexure-11 to the writ petition. In the said order, it is mentioned in fourth paragraph as follows:

Finally on February 27, 2004, representative of the establishment agreed to comply with the Provisions of the Act w.e.f. January 1, 1996 but from the E.Os. report corporating the list of 33 employees duly signed by principal of the school on its letter head, it is found that Act is applicable to the establishment w.e.f. July 1, 1991. Sri Bhardwaj argued that 7-A proceedings were initiated since January 1, 1996, hence establishment had objections in respect of coverage w.e.f. July 1, 1991. It is pertinent to mention here that the signature of the principal on the list of employees are confirmed by Sri N.K. Bhardwaj, representative of establishment.

3. Ultimately, the Commissioner held that the college was rightly covered under the Act and P.F. dues w.e.f. July 1, 1991 upto date should be paid by it within 15 days. Review petition filed against the said order was rejected on March 15, 2005. Thereafter appeal was filed by the college, which was registered as ATA No. 402 (14)/2005. E.P.F. Appellate Tribunal, New Delhi dismissed the appeal through judgment and order dated August 8, 2005, hence this writ petition. Learned Counsel for the petitioner has argued that the college/school in question is not covered under the Act as it does not employ more than 20 persons. In reply to this, argument of learned Counsel for the respondents is that this point is no more open to the petitioners as before R.P.F. Commissioner, they conceded that they were liable to pay P.F. contribution as contained in the order dated February 27, 2004 quoted above. I agree with the contention of the learned Counsel for the respondents. As contained in the above quoted portion of judgment of R.P.F. Commissioner, the school/college agreed to comply with the provisions of the Act. The only dispute raised, by it was regarding the date since when compliance should be made. According to the college in question, it was required to comply with the provisions w.e.f. January 1, 1996. However, according to the respondents the, college/school was liable to comply with the provisions w.e.f. July 1, 1991. Accordingly, the said point, is no more open to the petitioners. Same argument raised before appellate authority was also not maintainable.

4. In the judgment of the appellate authority, it is mentioned that coverage notice was issued on October 30, 1996 bringing the college/school in question within the purview of the E.P.F. Act w.e.f. January 1, 1996 and simultaneously the code was also allotted. It is mentioned in the order of the appellate authority that the school/college in question started complying with the provisions of the Act and remitting the P.F. dues w.e.f. January 1, 1996 in the year 2003 itself (i.e. before passing of the order by R.P.F. Commissioner on February 27, 2004).

5. Appellate authority rightly held that the list of 33 employees signed by the Principal clearly showed that since 1991, there were always 22 or more employees employed by the school/college in question. In proceedings before R.P.F. Commissioner, the said list and signature of the Principal were admitted. After passing of the order by the Commissioner some representation was filed by the Principal through S.P. Singh that he was not aware about signing of the said

list. After admission of signature of Principal before R.P.F. Commissioner by representative of the school/college in question, it was no more open for the Principal to vaguely and evasively deny his signatures on the said list. The plea that two or three teachers having less qualification were not eligible for appointment was turned down by the appellate authority. In any case, qualification for appointment is wholly irrelevant for the purposes of E.P.F. Act. What is relevant is actual employment and working. Accordingly, the only point to be decided was regarding the starting point from which Act must be applied. In the first notice dated October 30, 1996 (copy of which is annexure-6 to the writ petition), it was mentioned that on January 1, 1996 in the institution 22 persons were working and it was further mentioned that provisions of the E.P.F. Act were applicable w.e.f. January 1, 1996 and through said notice the Code was also allotted to the institution in question. It was only during subsequent enquiry in 2003 that it revealed that since July 1, 1991, 22 persons were working. The list was signed by the Principal on April 22, 2003. The said list was submitted by Enforcement Officer along with its report of the same date, i.e. April 22, 2003. In the said list, 33 employees were shown on the date on which it was signed by the principal and it was also shown that 22 employees had been working since 1991.

6. It is correct that in the notice (Annexure-6 to the writ petition), it was mentioned that employees were engaged by the school/college in question since January 1, 1996, hence the school/college could be directed to comply with the provisions of the E.P.F. Act since the said date and as it agreed to comply with the provisions, since the said date, during proceedings before E.P.F., Commissioner, the matter could have been dropped. However even after closure of the proceedings on the agreement of the school/college to pay the dues w.e.f. January 1, 1996, fresh proceedings for payment of dues] from July 1, 1991 to January 1, 1996 could be reinitiated. No useful purpose will be served by quashing the impugned orders and again permitting the E.P.F. authorities to initiate proceedings for the period from July 1, 1991 to January 1, 1996 as Principal categorically admitted that since July 1, 1991, 22 persons were working. It would be only an ultra technical course and would only result in postponing the day of reckoning. There is no express prohibition in the E.P.F. Act that in case while hearing the objections regarding applicability of the Act with effect from a particular date, the R.P.F. Commissioner on the basis of cogent evidence comes to the conclusion that the Act should be made applicable even before the date mentioned for the said purpose in the notice it cannot apply the Act with effect from such previous date. After all, the authorities under the E.P.F. Act are bound to substantiate by evidence the date from which they intend to apply the Act on an establishment in proceedings u/s 7-A of the Act. If during the course of search of evidence, authorities find such material which justifies the applicability of the Act even before the date mentioned in the coverage notice, they are not debarred from asserting the same before R.P.F. Commissioner.

Accordingly, there is no merit in the writ petition, hence it is dismissed.