
(2015) 08 PAT CK 0108

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 533 of 2015

Mahadeo Singh College

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2015) 147 FLR 304 : (2015) 4 LLN 774 : (2015) 4 PLJR 116

Hon'ble Judges : Rakesh Kumar, J.

Bench : Single Bench

Advocate : Chitranjan Sinha and Manish Kumar, for the Appellant

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard Sri Chitranjan Sinha, learned Senior Counsel, who was assisted by Sri Manish Kumar, learned Counsel for the petitioner, learned A-C. to Standing Counsel - 26, Sri Prashant Sinha, learned Counsel, who has appeared on behalf of respondent/Employees Provident Fund Organization (in short "EPFO") and Counsel appearing for respective parties. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order dated 9.12.2014 passed by the Assistant Provident Fund Commissioner, Sub-Regional Office, Bhagalpur under section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the EPF Act,) in Case No. 14 of 2014, whereby it was held that the provisions under the Act was applicable in respect of petitioner i.e. Mahadeo Singh College (hereinafter referred to as the College,) and an assessment order was passed.

2. Earlier, in 2010 i.e. by a communication dated 8.9.2010, the Principal of the petitioner-College was intimated by the Assistant Provident Fund Commissioner, S.R.O., Bhagalpur regarding applicability of the establishment under the EPF Act. It was replied by the petitioner wherein it was stated that payment of salary to the employees of the College was being made available through account payee

cheque from the internal source of the College, as per direction of the adjudicating committee/Governing Body of the College. It was further indicated that College has not received any type of financial assistance regarding payment of the employees from any government sectors. Anyhow, the matter regarding applicability of the EPF Act was deferred for a long period and finally, by the impugned order, applicability was decided and assessment order has also been passed, which has been assailed by the petitioner in the present writ petition.

3. In this case, counter-affidavit was filed on behalf of respondent/EPFO. Besides taking other ground, a specific plea was taken that the writ petition was not maintainable on the ground that against the impugned order, there was provision of appeal under section 7-1 of the "EPF Act".

4. At the time of hearing of this petition also, a preliminary objection was raised by Sri Prashant Sinha, learned Counsel for the respondent/EPFO regarding maintainability of the writ petition. Accordingly, Sri Chitranjan Sinha, learned Senior Counsel for the petitioner has addressed the Court on the point of maintainability of the writ petition.

5. At the very outset, Sri Sinha, learned Senior Counsel for the petitioner admits that it is true that rule of exclusion of availability of the alternative remedy in exercising writ jurisdiction is discretionary, however; he has placed reliance on number of orders/judgments of this Court as well as Apex Court to satisfy the Court that in view of facts and circumstances of the present case, it is necessary that this Court, instead of asking the petitioner to relegate to the appellate authority, may entertain the petition and decide the case on merit. He has further submitted that in this case, since pleadings have already been completed and on number of dates, the matter was heard, the writ petition may not be rejected on the ground of only availability of the alternative remedy. To corroborate his submission, he has placed reliance on a Division Bench Judgment of the Patna High Court, Ranchi Bench *Tis Fab Limited Vs. State of Bihar and Others*, . He has specifically referred to paragraph - 9 of the judgment. He submits that in the said case, since pleadings were already completed, the Division Bench has not entertained the preliminary objection on the point of maintainability, in view of alternative remedy. He has further placed reliance on *Punsraj Begawani and Another Vs. The State of Bihar and Another*, . He has referred to paragraph - 8 of the judgment and submits that in view of the facts and circumstances of the present case, writ petition may be entertained on merit. He has placed reliance on *Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School and Others*, , (Ranchi Bench) (*Mohd. Ataur Rahman Vs. State of Bihar and Others*,), *Union of India (UOI) and Another Vs. State of Haryana and Another*, , and also on *Rajasthan State Electricity Board Vs. Union of India (UOI) and Others*, . Relying on aforesaid judgments, he submits that in view of section 16 of the "EPF Act", the petitioner, being affiliated with the Tilka Manjhi Bhagalpur University, is not amenable to the "EPF Act". He submits that the College is governed by the Bihar Universities Act,

1976 and as such, the petitioner is excluded from the applicability of the "EPF Act". On aforesaid grounds, he submits that since in the present matter, the question of interpretation of section 16 of the EPF Act is involved, the petitioner may not be asked to approach the appellate authority. This question is to be adjudicated by this Court. Accordingly, a prayer has been made to set aside the impugned order.

6. Sri Prashant Sinha, learned Counsel for the respondent/E.P.F.O. has vehemently opposed the prayer of the petitioner. At the very outset, he has referred to a Single Bench order of this Court passed in a similarly affiliated College, which was affiliated with the same University i.e. Tilka Manjhi Bhagalpur University. He submits that this Court has held that being independent legal entity, as it was not recognized rather affiliated, the said College was liable to comply with the provisions of the Act and scheme framed thereunder. The Single Bench order of this Court passed on 11.5.2010 in CW.J.C. No. 14446 of 2009 has been brought on record, as Annexure-B to the counter affidavit filed on 19.3.2015. He further submits that the "EPF Act" is itself a Code, which provides alternative remedy. He submits that order impugned has been passed by the Assistant Provident Fund Commissioner under section 7-A of the "EPF Act". The Assistant Provident Fund Commissioner determining the applicability and passing an assessment order was exercising power of a Court of competent jurisdiction. He was also having similar power as civil Court to summon document and examine witnesses. The order passed under section 7-A to the "EPF Act" is applicable under section 7-1 of the "EPF Act". According to Sri Sinha, learned Counsel for the respondent/EPFO, such appeal is treated as first appeal against the order passed under section 7-A of the Act and as such, against order passed under section 7-A of the Act, if there is statutory remedy available under the Act itself, the petitioner may not be allowed to invoke the extraordinary writ jurisdiction. He has placed heavy reliance on a judgment of the Apex Court in United Bank of India Vs. Satyawati Tondon and Others, . He has specifically placed reliance on paragraph - 43 of the judgment, which is quoted here-in-below:--

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies, with greater rigour in matters involving recovery of taxes, cess, fees, (sic) types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the

remedies available under the relevant statute."

7. Besides this, he has also placed reliance on (Nivedita Sharma Vs. Cellular Operators Assn. of India and Others, . He has specifically referred to paragraphs 13 and 14 of the judgment. For just decision in the matter, it would be appropriate to quote the same, which are as follows:--

"13. In Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , this Court observed: (SCC pp. 440-41, para 11)

"11...It is now well recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford in the following passage: (ER p. 495)"

....There are three classes of cases in which a liability may be established founded upon a statute. ...But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ...The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Cordon Grant and Co. Ltd.* and *Secy. of State v. Mast and Co.* It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.

14. In *Mafatlal Industries Ltd. v. Union of India* B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77) 77. ...So far as the jurisdiction of the High Court under Article 226 -or for that matter, the jurisdiction of this Court under Article 32 -is concerned, it is obvious that the provisions of the Act cannot bar and curtain these remedies. It is, however, equally obvious that while exercising the power under Article 226 /Article 32 , the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment".

8. On aforesaid ground, Sri Prashant Sinha has further argued that in view of the fact that after assessment, recovery of amount is to be effected for welfare of the employees, in all fairness, the petitioner may not be allowed to invoke the writ jurisdiction, rather he should be asked to approach the appellate authority. He further submits that before filing of the appeal, it is required to deposit 75% of the assessed amount. Only then, appeal is required to be entertained. Accordingly, a prayer has been made to reject the writ petition on the ground of

its maintainability only.

9. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. Fact remains that the order, which is under-challenge, is appealable under the "EPF Act" itself. It is also not in dispute that exercise of power under Article 226 of the Constitution of India is discretionary power. This Court is of the opinion that in case of availability of statutory remedy non exercise of jurisdiction under Article 226 of the Constitution of India is rule and exercise of such power in case of availability of statutory remedy is an exception. Of course, alternative remedy may not be taken as complete bar in exercising writ jurisdiction, but in view of the peculiar facts and circumstances of the present case i.e. the fact that the Act itself is social Act, which has been enacted for welfare of the employees of an establishment, this Court is refraining from exercising its writ jurisdiction.

10. The Court is of the considered opinion that in such cases, discretion may not be exercised in favour of the petitioner. Of course, learned Senior Counsel for the petitioner had placed reliance on number of judgments of this Court as well as Apex Court, but he was not in a position to point out as to whether in such cases i.e. in case where there is statutory remedy, this Court is mandatorily required to exercise writ jurisdiction. Since discretion lies with this Court, the Court is of the opinion that in a situation, where there is statutory remedy, particularly; in the "EPF Act", which is made for welfare of the employees of an establishment, this Court may put a self imposed restriction in exercising writ jurisdiction. The writ petition stands dismissed as there is already statutory remedy available to the petitioner.