

(2015) 09 J&K CK 0023
In the Jammu And Kashmir High Court
Case No : Case No. OWP 1604 of 2015

Mohd. Amin Bhat

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 21,
Section 9

Citation : (2016) 3 JKJ 695

Hon'ble Judges : Mr. Muzaffar Hussain Attar, J.

Bench : Single Bench

Advocate : Mr. N.A. Kuchhai, Advocate, for the Petitioner; Mr. Sameer Ahmad,
Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Muzaffar Hussain Attar, J.(Oral)—The petitioner is aggrieved of the summons dated 01st August, 2015 besides warrants issued, on the

ground that the C.P Fund amount is to be deposited in the Bank, which is the requirement of second proviso appended to paragraph 38 of the

Employees Provident Funds Scheme 1961 (for short Scheme of 1961).

2. The mode of payment of contributions is prescribed in paragraph 38 of the Scheme of 1961. It is provided that the employer shall, before

paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employees' contribution

from his wages which together with his own contribution as well as an administration charge of such percentage of the total employers and

employees contributions as may be fixed by the Government, shall, within fifteen days of close of every month, pay to the Fund by separate bank

drafts or cheques an account of contribution and administrative charge.

3. Second proviso to paragraph 38 of the Scheme of 1961 provides that where there is no branch of J&K Bank at the Station where factory or

other establishment of business is situated, the employer shall pay to the Fund the amount mentioned by means of State Treasury Government

drafts at par separately on account of contributions and administrative charges.

4. Admittedly, the petitioner has not complied with paragraph 38 of the Scheme of 1961.

5. Learned counsel for the petitioner submitted that mode of recovery of moneys due from the employers is prescribed by Section 9 of the J&K

Employees Provident Funds (And Miscellaneous Provisions) Act, 1961 (for short Act of 1961). Learned counsel further submitted that the

Provident Fund Commissioner has no authority to issue the impugned notice.

6. Section 21 of the Act of 1961 deals with delegation of powers and prescribes that any power or authority or jurisdiction exercised by it under

this Act or any scheme shall, in relation to such conditions, as may be specified in the direction, be exercisable also by such Officer or authority

subordinate to the Government as may be specified in the notification.

7. In paragraph 9(b) of the writ petition, the petitioner has pleaded and it is also submitted by his learned counsel at bar that to the knowledge of

the petitioner, the Government has not authorised any authority to seek recovery of moneys due from employers under the Act of 1961, which

authority is vested with the Government in terms of section 9 of the Act of 1961.

8. The petitioner has raised this objection on the ground of his knowledge only. It is nowhere pleaded that the respondent -Additional Provident

Fund Commissioner has no authority to issue notices. It is also not specifically pleaded that the Additional Provident Fund Commissioner has not

been authorised in terms of Section 21 of the Act of 1961 to seek recoveries of the moneys due from the employers.

9. The Additional Provident Fund Commissioner, in the aforesaid factual situation, cannot be said to be lacking authority to initiate action for

recovery of the moneys due from the employer.

10. In the aforementioned backdrop, this petition is held to be meritless and is, accordingly, dismissed in limini along with connected IAs.

However, the petitioner would be at liberty to approach the Additional Provident Fund Commissioner to project his version of the case.