
(2019) 09 GAU CK 0030
In the Gauhati High Court
Case No : Writ Appeal No. 176 Of 2019

Monish Das @APPELLANT@Hash Union Of India And Ors

Date of Decision : 11-09-2019

Acts Referred:

Employees Provident Fund And Miscellaneous Provisions Act, 1952 — Section 1(3)(b),
1(4), 2(i), 4, 7(A), 7(Q), 14(B)
Code Of Civil Procedure, 1908 — Section 11
Constitution Of India, 1950 — Article 226

Citation : (2019) 09 GAU CK 0030

Hon'ble Judges : Arup Kumar Goswami, J; Manish Choudhury, J

Bench : Division Bench

Advocate : N. Dhar, T. Laskar, S. Dasgupta, D. Dey

Final Decision : Dismissed

Judgement

A.K. Goswami, J

1. Heard Mr. N. Dhar, learned counsel for the appellant. Also heard Mr. D. Dey, learned counsel appearing for the respondents.

2. Challenge in this intra-Court appeal is to the order dated 11.06.2019, by which the appellant's writ petition, wherein a challenge was made to the order dated 23.10.2015 issued by the Regional Provident Fund Commissioner-II(PD) in an inquiry proceeding under Section 14B and 7Q of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (for short, the 1952 Act) directing the appellant to deposit penal charges and interest amount of Rs.29,63,939/- and Rs.15,92,022/-, respectively. A further prayer in this writ petition was for a direction to refund an amount of Rs.31,52,693/- with interest accrued thereon, which was realised from the appellant on the basis of the impugned order dated 10.06.2014 (Annexure-4 of the writ appeal). The order dated 10.06.2014 was issued by the Assistant Provident Fund Commissioner in an enquiry under Section 7A of the 1952 Act determining an amount of Rs.31,52,693/- for the period from 05/2009 to 01/2013 as dues payable by the employer in relation to the establishment towards provident fund, employees' pension fund, insurance

fund contributions and inspection/administration charges towards provident fund and insurance fund for the period from 09.05.2009 to 31.01.2013 within 15 days from the date of the order.

3. Mr. Dhar submits that provisions of 1952 Act is not applicable to the appellant's establishment in view of Section 1, sub-section 3(b); Section 1, sub-section (4); Section 2(i) and Section 4 read with Schedule-I of the 1952 Act and therefore, the impugned orders being arbitrary and without jurisdiction, are liable to be set aside and quashed.

4. It appears that the order dated 10.06.2014 was assailed by the writ appellant earlier by filing a writ petition under Article 226 of the Constitution of India before this Court, which was registered as WP(C) No.4056/2014. The said writ petition was dismissed by an order dated 03.09.2014 holding that the appellant's establishment was brought within the purview of the 1952 Act. The aforesaid order was not assailed in any forum.

5. A perusal of the order dated 23.10.2015 goes to show that the Manager and the authorised representative of the establishment submitted a representation vide letter dated 24.08.2015 duly signed by the proprietor praying for grant of 40 instalments to clear the interest and penalty accrued. The representation is available at Annexure-10 of the appeal papers at page-35.

6. The learned Single Judge, on consideration of the matter, taking note of the order dated 10.06.2014 and the fact that the appellant had paid the principal amount, opined that some time may be granted to the appellant to pay the entire penalty damages and interest and accordingly, had directed the appellant to deposit 60% of the penal charges and the interest amount within a period of 3(three) weeks from the date of the order and to pay the balance amount within a further period of 4(four) months.

7. By placing reliance on a judgment of the Hon'ble Supreme Court in the case of Supreme Court Employees Welfare Association Vs. Union of India and another, reported in (1989)4 SCC 187 with particular reference to paragraph 23 thereon, Mr. Dhar contends that even though the order dated 23.10.2015 had arisen as a consequence of the order dated 10.06.2014, this Court can still reopen the order dated 10.06.2014 and the same will not be hit by the principle of res judicata.

8. Mr. Dey, however, contends that in the present facts and circumstances, the aforesaid judgment of the Hon'ble Supreme Court will not be attracted.

9. In paragraph 23 of the aforesaid judgment, the Hon'ble Supreme Court had extracted the observations made by the Hon'ble Supreme Court in the case of Mathura Prasad Bajoo Jaiswal Vs. Dossibai N.B. Jeejeebhoy, reported in (1970)1 SCC 613, wherein it is observed as follows:-

"

It is true that in determining the application of the rule of res judicata the Court

is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression 'the matter in issue' in Section 11, Code of Civil Procedure means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."

10. A perusal of the above judgment goes to show that the matter in issue, if it is one purely of fact as also a mixed question of law and fact determined in the earlier proceeding between the same parties by a competent Court, must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. The Hon'ble Supreme Court, however, observed that when the decision is on a question of law, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same. However, when the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, a party affected by the decision will not be precluded from challenging the validity of the order as rules of procedure are subservient to the law of the land.

11. In the instant case, the cause of action has remained the same as the order dated 23.10.2015 was a logical consequence of the earlier order dated 10.06.2014, which was passed on the basis that establishment of the appellant is covered under the 1952 Act. In the attending facts and circumstances, we are of the opinion that the order dated 10.06.2014 had attained finality and cannot be reopened in a subsequent writ proceeding.

12. Taking that view, we find no merit in this appeal and accordingly, the same is dismissed.