
(2010) 10 MAD CK 0093
In the Madras High Court
Case No : Writ Petition No. 10532 of 2003

Mr. M. Arunkumar

APPELLANT

Vs

The Assistant Provident Fund Commissioner, Employees'
Provident Fund Organisation and The Recovery Officer,
Employees' Provident Fund Organisation

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A,
7A(1), 7A(4)

Citation : (2010) 10 MAD CK 0093

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : Y. Jyothish Chander, for the Appellant; K. Gunasekar, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—Heard learned Counsel for the Petitioner and the learned Counsel for the Respondents.

2. The writ petition has been filed challenging the order of the first Respondent dated 19.3.2003, by which, the first Respondent has rejected the

application of the Petitioner dated 20.2.2003 to set aside the ex parte order passed by the first Respondent dated 30.11.2000 u/s 7A(1) of the

Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

3. It is seen that in respect of non compliance of the statutory obligations under the provisions of the said Act, summons were issued to the

Petitioner directing him to appear on 25.2.2000. It is the case of the Petitioner that the said summons directing him to appear on 25.2.2000 came

to be received only on 28.2.2000. However, the first Respondent has passed ex

parte final orders on 30.11.2000/15.12.2000 u/s 7A(1) of the said Act quantifying the amount due by the Petitioner under the employees' state insurance scheme to the tune of Rs. 3,17,535.80 Ps and further directing the Petitioner to remit the said sum in the respective employees' state insurance accounts. It is the further case of the Petitioner that the said final order passed by the first Respondent has not been served on the Petitioner immediately and the same came to be served to him only by the communication dated 19.12.2002.

4. After receiving the said order of the first Respondent dated 30.11.2000/15.12.2000 as stated above, the Petitioner has filed an application on 20.2.2003, which is stated to be within 90 days from the date of receipt of the copy of the order as required u/s 7A(4) of the said Act, which is as follows:

Where an order under Sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice, if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

5. It is on receipt of the said application filed for setting aside the ex parte order dated 30.11.2000/15.12.2000, the first Respondent took up the said application as review and passed the impugned order rejecting the application on the ground that the original order u/s 7A of the said Act was sent to the establishment on 15.12.2000, that the counsel appearing for the establishment has also referred to the said order in his letter dated 6.7.2001, that the letter of the said counsel dated 6.7.2001 was taken up as the application for setting aside the ex parte order and rejected as time barred on 24.8.2001 itself and that therefore, the application filed by the Petitioner on 20.2.2003 was belated.

6. On a reference to the communication of the first Respondent dated

19.12.2002 shows that the order passed u/s 7A(1) of the said Act was served on the Petitioner only along with the said letter dated 19.12.2002 and within 90 days from the said letter of the first Respondent, the Petitioner has filed the application to set aside the ex parte order, which is admitted by the first Respondent in the impugned order itself. However, there is nothing on record to show that on 6.7.2001, the counsel, who appeared for the establishment, has filed any application in the manner known to Section 7A(4) of the said Act. Any letter, which would have been written by the counsel, cannot be taken as an application for the purpose of setting aside the ex parte order. In such circumstances, I am unable to accept the contention of the learned Counsel for the Respondents that the letter of the counsel for establishment dated 6.7.2001 should be taken as the application for setting aside the ex parte order or at least that it should be taken as the date of knowledge of the order passed by the first Respondent especially in the circumstances as stated above. The first Respondent must have communicated the order even in December 2000. Inasmuch as, from the date of communication of the order, which is the time stipulated under the said Act, an application has been filed to set aside the order, I am of the considered view that the Petitioner must be given an opportunity to explain his case to the first Respondent, who shall pass orders on merits and in accordance with law.

7. In such view of the matter, the impugned order of the first Respondent is set aside and the writ petition is allowed. The matter is remitted to the first Respondent with a direction to consider the application filed by the Petitioner dated 20.2.2003 and pass appropriate orders thereon on merits and in accordance with law within eight weeks from the date of receipt of a copy of this order, after affording an opportunity to the Petitioner. No costs.