

(2020) 08 JH CK 0244

In the Jharkhand High Court

Case No : Writ Petition (L) No. 2479 Of 2015

M/s Bharat Sanchar Nigam Limited

APPELLANT

Vs

Employees Provident Fund Organization & Ors

RESPONDENT

Date of Decision : 26-08-2020

Acts Referred:

Employees' Provident Fund And Miscellaneous Provisions Act, 1952 — Section 7A, 7B, 7C, 7I, 14B

Citation : (2020) 08 JH CK 0244

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : Rupesh Singh, Piyush Chitresh

Final Decision : Dismissed

Judgement

In view of outbreak of COVID-19 pandemic, case has been taken up through Video Conferencing. Concerned lawyers have no objection with regard to the proceeding, which has been held through Video Conferencing today at 10:30 A.M. onward. They have no complaint in respect to the audio and video clarity and quality.

Learned Counsel for the petitioner assails the impugned order on the ground that the impugned order by which liability under Section 7 A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 has been assessed in respect of 196 employees allegedly working under the petitioner, is erroneous as neither the complainant was examined nor any document disclosing the employment of 196 persons by the petitioner was produced before the authority. Even the award was passed only for 39 persons.

It was further argued that though the petitioner and the contractor employed by the petitioner have been depositing the amount under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 regularly, the same has not been considered by the authority while making assessment under Section 7A of the

Act.

However, the same was contradicted by the learned Counsel appearing for the E.P.F. and submitted that the proceeding under the Minimum Wages Act, 1948 was initiated on behalf of 196 persons and therefore, the petitioner has been assessed under Section 7A of the Act for not depositing the P.F. amount for 196 persons.

From the impugned order itself it does not reflect that the assessment under Section 7A of the Act was made on the basis of the order passed in the proceeding under the Minimum Wages Act, 1948 though the order mentions the same. It also appears that on behalf of the workmen photo copy of ACE-2 was produced, however, genuineness of the same was not established before the authority.

Learned Counsel for the petitioner submits that no report of the Enforcement Officer was produced before the authority at the relevant time and the only report which was available was made prior to 10.12.2014.

Learned Counsel appearing for the respondent-E.P.F. vehemently opposes the contention of the learned Counsel for the petitioner and argues that petitioner has rushed to this Court without availing the alternative remedy of appeal and review under Section 7 I and 7B of the Act. Section 7 -I reads thus:

"7-I. Appeal to Tribunal.- (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of Section 7-A, or section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof], or Section 7-C, or Section 14-B, may prefer an appeal to a Tribunal against such notification or order."

Today when the case was called out Mr. Piyus Chitresh, representing the respondent No.7 argues that admittedly the petitioner has rushed to his Court without availing the alternative remedy of appeal and review and as such a direction may be given to the petitioner to prefer appeal before the appropriate Forum.

It appears from the order dated 18.06.2015 that a sizable amount was handed over to the Assistant Provident Commissioner by way of bank draft and the petitioner was permitted to operate the account.

Since the parties have appeared and the respondents have argued that an alternative remedy is there which also appears from the Section 7 I of the Act.

Learned Counsel for the petitioner also seeks permission of this Court to withdraw this writ petition in order to prefer appeal before the appropriate Forum.

Permission is accorded, Accordingly, this writ petition is dismissed as withdrawn with a direction to the petitioner to prefer appeal before the appropriate Forum

within a period of eight weeks from the date of receipt/production of a copy of this order. The petitioner is at liberty to raise all his grievance before the appropriate Forum and it will be open to the Forum to decide the limitation period in filing the said appeal.

On 18.06.2015 an interim order was granted that respondent shall not take any further coercive action against the petitioner, the same shall continue till filing of the appeal before the appropriate Forum/authority.