

(2009) 08 JH CK 0022

In the Jharkhand High Court

Case No : Writ Petition (C) No's. 6592 and 6617 of 2007

M/s Binod Kumar Jain, Bokaro

APPELLANT

Vs

Provident Fund Commissioner, E.P.F.O., Ranchi and others

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

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

Citation : (2010) 125 FLR 172

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : Kalyan Roy and R.M. Singh, for the Appellant; Banani Verma, for the Respondent

Judgement

D.G.R. Patnaik, J.—Both these writ applications are heard together and disposed of by this common order.

2. Heard Mr. Kalyan Roy learned Counsel for the petitioners and Mrs. Banani Verma learned Counsel for the respondent No. 2.

3. The petitioners in these two writ applications have challenged the order dated 24.9.2007, passed by the respondent No. 2 in the proceedings u/s F/-A of the E.P.F. and M.P. Act, whereby the petitioners were directed to deposit the amounts specified in the orders, which had purportedly accrued by way of arrears of deposit towards P.F. contributions, from July, 2003 to July, 2006 together with interest calculated thereon.

4. By an amendment in both the writ applications, the petitioners have introduced the orders passed by the Reviewing Authority u/s 7-B of the Act on the Review applications filed by the petitioners and have prayed for quashing the orders passed by the Reviewing Authority.

5. For realization of the amounts assessed against the petitioners the Bank accounts of the petitioners were attached. However, by order dated 22.1.2008

passed by this Court in both these writ applications, the Bank account was ordered to be released from attachment upon the petitioners' depositing 50 per cent of the principal amount assessed against them in the impugned order u/s 7-A of the Act, subject to the final result of both the writ applications.

6. The contention of the learned Counsel for the petitioners, in both these writ applications are that the petitioners have deposited the amount of P.F. of their respective employees between the period, March, 2002 to August, 2006. The amounts on enhanced V.D.A. for about two months could not be deposited as Because the petitioners had no information about the Government Notification regarding the enhanced V.D.A. and in absence of such information, the petitioners could not deduct the P.F. contributions at the enhanced rate of V.D.A from the workmen.

7. Learned Counsel adds that before the concerned authorities in the proceedings u/s 7-A of the Act, the petitioner had disputed the calculations made by the Enforcement Officer regarding the arrears amount of deposit towards the E.P.F. funds. Learned Counsel adds that without considering the statements made by the petitioners and acting entirely upon the wrong calculations submitted by the Enforcement Officer, the concerned authority had passed erroneous orders u/s 7-A of the Act against the petitioners directing them to deposit the amount specified thereunder.

8. Learned Counsel adds that both the petitioners had submitted their respective applications for review of the order before the concerned authority u/s 7-B of the Act. The applications were summarily rejected by the Reviewing Authority without affording any opportunity to the petitioners of being heard and merely on the ground that applications were not filed in the prescribed format and that the applications have been filed belatedly.

9. Learned Counsel submits that the Reviewing Authority had not applies its judicial mind to the facts pleaded by the petitioners and to the material available on record and has merely adopted the findings recorded in the order passed u/s 7-A of the Act. Learned Counsel explains that to authorities while disposing of the proceedings under sections 7-A and 7-B of the Act, have seriously erred in failing to take into consideration the petitioners categorical statement that the calculations made by the Enforcement Officer was erroneous and the further statement that the petitioner were not aware of the enhancement made by the Government in the V.D.A. According to the learned Counsel, even if the deposits could not be made on the basis of the enhanced V.D.A., the petitioners cannot be made liable to pay any interest on the accrued amount.

10. Per contra, learned Counsel for the respondents would submit that the instant writ applications are not maintainable in view of the fact that the petitioners ought to have availed the statutory remedy of appeal before the Appellate Tribunal under the provisions of section 7(1) of the Act.

11. Mrs. Benani Verma would argue that the provisions u/s 7-B a the Act do not

impose any obligation upon the concerned authority to issues notice to the parties, if it proposes to reject the Review application. Such opportunity of being noticed in advance and of being given opportunity of hearing, could be demanded only in case whether the concerned authority proposes to grant the application for review.

Learned Counsel adds further, that even as admitted by the petitioners, the) had failed to deposit the P.F. amounts on the basis of the enhanced V.D.A. rate and in this view of the matter, there is no error or perversity either in the order passed u/s 7-A of the Act or on the Review application filed by the petitioners.

12. I have heard the learned Counsels for the parties and have also gone through the impugned order passed u/s 7-B of the Act.

13. As it appears, the impugned orders rejecting the application of the petitioners u/s 7-B of the Act, have been passed mainly on the ground that the application for review have not been filed in the prescribed Form 9 and that the applications were filed beyond the period of limitation of 45 days from the date of making the order u/s 7-A of the Act. As regards the merits of the contentions raised by the petitioners in the Review application, the Reviewing Authority has merely examined the records available in the office and. endorsed the findings recorded by the concerned authority in the proceedings u/s 7-A of the Act. Applying, the specific ground pleaded by the petitioners have not been adverted to by the Reviewing Authority, nor have the petitioners been afforded any opportunity to explain the documents which they had produced in the proceedings.

14. The contention of the learned Counsel for the respondent that the. Reviewing Authority had no obligation to offer any opportunity to the petitioners of being heard or to explain the matters, does, not appeal to reason and appears to be misconceived. Merely because the provisions u/s 7-B of the Act, specifically provides that if the application for review is granted then before granting, the party should be given prior notice and be heard and because such corresponding requirement has not been mentioned specifically in case where the authority concerned proposes to reject the application, it does not lay down that the petitioner should be deprived of an opportunity of being heard. The principles of equity and natural justice do certainly apply and would demand that before passing any order, which lead to civil consequences adverse to the interest of the petitioners, a reasonable opportunity has to be given to them to explain their case before passing any such order. I am satisfied from the submissions made by the learned Counsel for the petitioners that reasonable opportunity of hearing has not been given to them by the Reviewing Authority before passing the impugned order on the Review application. Accordingly, both these writ applications [W.P. (C) No. 6592 of 2007 and W.P. (C) No. 6617 of 2007] are allowed. The impugned order of the Reviewing Authority dated 24.9.2007 passed on the Review applications of the petitioners, are hereby set aside. Accordingly, I remand this matter to the Reviewing Authority for passing a fresh order on the

review applications filed by the petitioners. The petitioners shall appear before the Reviewing Authority within 15 days from the date of this order, whereafter the Reviewing Authority shall fix and communicate an appropriate date to enable the petitioners to submit their explanations grounds and thereafter pass an appropriate, speaking and reasoned order in accordance with law on the Review Applications.

15. Let a copy of this order be given to the learned Counsel for the parties.