
(2016) 06 KAR CK 0053

In the Karnataka High Court

Case No : Writ Petition No. 202675 of 2015 (L-PF)

M/s. Deccan Education Society

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-06-2016

Acts Referred:

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

Citation : (2016) 150 FLR 646 : (2016) LabLR 1185

Hon'ble Judges : Raghvendra S. Chauhan, J.

Bench : Single Bench

Advocate : Amit Kumar Deshpande, Advocate, for the Appellant; Smt. Hema L.K, Advocate, Sajjanshetti, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Raghvendra S. Chauhan, J.—The petitioner, M/s. Deccan Education Society, has challenged the legality of the order dated 13.2.2015 passed by the Regional Provident Fund Commissioner-II, Kalaburagi, whereby the learned Regional Provident Fund Commissioner has dismissed the review application filed by the petitioner under section 7-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("the Act" for short).

2. Briefly the facts of the case are that, the petitioner-Society is engaged in imparting education to students. The Society is managing various colleges where the education for degree of B.Ed., M.Ed D.Ed., etc., is, imparted and bestowed. The said Society was brought under the cover of the Act from 2009. However, it was discovered by the Assistant Provident fund Commissioner that despite being brought under the cover of the Act the petitioner-Society was not depositing its share of the provident fund for the welfare of its employees. Therefore, the Assistant Provident Fund Commissioner initiated enquiry under section 7A of the Act, in order to determine the amount due from the society. In order to enquire, the Assistant Provident Fund Commissioner issued summons to the petitioner-Society on 9.7.2012 and directed the petitioner-Society to appear before him on

26.7.2012. However, as no one appeared on behalf of the Society, the case was posted to 16.8.2012. Despite giving a large number of dates, almost 29 dates, still no one appeared on behalf of the petitioner-Society before the Assistant Provident Fund Commissioner. Meanwhile, the Enforcement Officer submitted his inspection report, and gave his deposition. Having considered the inspection report and the deposition, by order dated 1.8.2014, the Assistant Provident Fund Commissioner directed the petitioner-Society to deposit an amount of Rs. 20,33,803/- with the department.

3. Since the petitioner-Society was aggrieved by the said order, it filed a review petition under section 7-B of the Act, before the Assistant Provident Fund Commissioner. However, by order dated 13.2.2015, the learned Regional Provident Fund Commissioner dismissed the review petition, mainly on the ground that the review petition had to be filed within three months from the date of the communication of the order under section 7-A of the Act. Since the review petition was filed beyond the said period of limitation, the review petition was rejected. Hence, the present petition before this court.

4. Mr. S.S. Sajjanshetti, the learned Counsel for respondent No. 2, has raised a preliminary objection with regard to maintainability of the present petition. According to him, the petitioner has availability of an alternative remedy of filing of an appeal against the impugned order before the Appellate Tribunal under section 7-1 of the Act. Therefore, the writ petition is not maintainable before this court.

5. On the other hand, Mr. Ameet Kumar Deshpande, the learned Counsel for the petitioner, has pleaded that according to section 7-B (5) no appeal would lie against an order rejecting the review application. Therefore, the petitioner does not have availability of an alternative remedy of filing of an appeal under section 7-1 of the Act. According to the learned Counsel, even section 7-1 clearly stipulates that an order passed under section 7-B rejecting the review application cannot be challenged by way of filing of an appeal. Thus, according to the learned Counsel, since there is no alternate remedy available to the petitioner, the petitioner is well within his rights to file the present writ petition.

6. Heard the learned Counsel for the parties on the preliminary objection.

7. Section 7-B (5) of the Act is as under:

"7-B(5). No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7-A."

8. Section 7-1 is also as under:

"[7-1. Appeals 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.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as maybe prescribed.]"

9. A bare perusal of section 7-B (5) clearly reveals that the said sub-section can be divided into two parts. While the first part debars filing of an appeal against an order of the Officer rejecting an application for review, the second part permits an appeal against an order passed under review, and creates a legal fiction that the said order shall be deemed to have been passed under section 7 A of the Act.

10. The first part of section 7-B (5) of the Act is further reiterated in section 7-1 of the Act. For section 7-1 clearly lays down that although a person aggrieved by the order under section 7-1 may file an appeal, but a person is not permitted to file an appeal against an order rejecting an application for review as referred to in sub-section (5) of section 7-B. Therefore, an harmonious reading of both these provisions make it abundantly clear that in case a review application were rejected under section 7-B of the Act, then no appeal shall lie against, such rejection order before the Appellate Tribunal. Hence, the preliminary objection raised by the learned Counsel for respondent No. 2 that the petitioner has efficacious alternative remedy is belied by sections 7-B and 7-1 of the Act. Thus preliminary objection is hereby rejected.

11. As far as the merits of the case are concerned, Mr. Ameet Kumar Deshpande, the learned Counsel for the petitioner, has pleaded that according to section 7-B of the Act, the review application has to be entertained by the very same officer who has passed the order under section 7A. However, in the present case, while the order under section 7A was passed by the Assistant Provident Fund Commissioner, the review application was dismissed by the Regional Provident Fund Commissioner. Therefore, the review application has not been decided by the officer who has passed the order under section 7A of the Act. Therefore, the order has been passed by an officer contrary to section 7-B of the Act. Hence, the order dated 13.2.2015 is void ab initio.

12. The learned Counsel for the respondent No. 2 has fairly conceded that the impugned order dated 13.2.2015 has not been passed by the Assistant, Provident Fund Commissioner. Moreover, the Regional Provident Fund Commissioner does not have the jurisdiction to entertain the review application.

13. Considering the concession made by the learned Counsel for respondent No. 2, and considering the fact that according to section 7-B of the Act, the review application has to be decided by the very same officer who had passed the assessment order under section 7-A of the Act, this Court sets aside the impugned order dated 13.2.2015 and remands the case back to the Assist

Provident Fund Commissioner and directs the Assistant Provident Fund Commissioner to decide the review application hied by the petitioner within a period of two months from the date of receipt of a certified copy of this order.

14. The petition is hereby allowed in the aforementioned terms.

15. Smt. Hema L. Kulkarni, the learned Counsel appears on behalf of respondent No. 1. She is permitted to file vakalath on behalf of respondent No. 1 within one week.