

(2016) 09 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 6540 of 2010

M/s MN DAV Dental College and Hospital	APPELLANT
Vs	
Assistant Provident Fund Commissioner	RESPONDENT

Date of Decision : 30-09-2016

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14-B,
Section 7A, Section 7-Q

Citation : (2017) 1 CLR 1051 : (2017) 152 FLR 857 : (2017) LabLR 168 :
(2016) 4 LLJ 641

Hon'ble Judges : Mr. Sandeep Sharma, J.

Bench : Single Bench

Advocate : Mr. Rahul Mahajan, Advocate, for the Respondents; Ms. Megha Kapur
Gautam, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Mr. Sandeep Sharma, J. - By way of the present petition, the petitioner has prayed for the following reliefs:

(i) That the writ in the nature of certiorari may kindly be issued quashing the orders dated 3.3.2010 (Annexure P-5), dated 30.9.2008 (Annexure P3), dated 31.8.2006 (Annexure P- 2) and dated 13.4.2006 (Annexure P1).

(ii) That any other writ, order or direction which is found appropriate in the facts and circumstances of the present matter may kindly be issued.

(iii) That the record of the authorities below pertaining to this case may kindly be summoned for the kind perusal of this Hon"ble Court.

(iv) That the writ petition may kindly be allowed with cost throughout.

(v) Any other reliefs, which this Hon"ble Court deems just and proper in the facts and circumstances submitted herein above, may also kindly be passed in favour of the petitioner and against the respondents.

2. Petitioner, being aggrieved and dissatisfied with order dated 3.3.2010 passed by the EPF Appellate Tribunal in ATA No. 834(17)2008, whereby its appeal was rejected, approached this Court by way of present writ petition, seeking therein the reliefs as have been reproduced herein above.

3. It is undisputed that the petitioner-College is an unaided college and is governed by the Provident Fund Rules and Regulations. Respondent No.2, vide order dated 13.4.2006, invoking power under Section 7A of the EPF & MP Act, 1952 (herein after referred to as "Act") held the petitioner College liable to pay an amount of Rs. 28,67,664 on account of the provident fund dues for the period starting from April 1995 to February 2005. While passing the aforesaid order, authority concerned specifically concluded that aforesaid order is without prejudice to the action to be initiated under Sections 14, 14-A, 14-B and 7-Q of the Act. Petitioner-College being aggrieved and dissatisfied with the aforesaid order passed by RPFC, filed a Review Petition under Section 7-B of the Act. But the fact remains that the same was rejected by the competent authority vide Order dated 31.8.2006.

4. Since the petitioner-College failed to make payment in terms of the aforesaid orders passed by the authorities under EPF Act, proceedings under Section 14-B for damages and interest under Section 7-Q of the Act were also initiated against the present petitioner. It emerges from the record that since the petitioner failed to make payment despite several notices, Assistant Provident Fund Commissioner (DMG) in exercise of powers conferred under Section 14-B of the Act read with para- 32-A of the EPF Scheme 1952, para-5 of the Pension Scheme 1995 and para 8-A of the EDLI Scheme, 1976, levied damages under Section 14-B and interest under Section 7-Q to the tune of Rs. 38,62,372/-. Thereafter, vide annexure P-3, Assistant Provident Fund Commissioner, called upon the petitioner to deposit the aforesaid amount i.e. Rs. 38,62,372/- within a period of 15 days from the receipt of the order, failing which amount was to be recovered under Sections 8-B to 8-G of the Act. In the aforesaid order, the concerned authorities reserved liberty to initiate action under Sections 14, 14-A and 14-B of the Act, in case of default.

5. However, the fact remains that the petitioner instead of depositing the amount, filed an appeal before the EPF Appellate Tribunal, New Delhi, which came to be registered as ATA No. 834(17)2008. Perusal of the appeal preferred by the present petitioner (annexure P-4) suggests that the orders dated 30.9.2008 and 6.10.2008 passed by the competent authorities under Sections 14-B and 7-Q of the EPF Act levying damages and interest for the period from 4/1995 to 8/2007, were challenged before the Tribunal. Learned EPF Appellate Tribunal vide order dated 3.3.2010, dismissed the appeal. In the aforesaid background, present petitioner approached this Court by way of the present writ petition praying therein for quashing and setting aside order dated 3.3.2010 passed by the learned EPF Appellate Tribunal.

6. Ms. Megha Kapur Gautam, Advocate, appearing for the petitioner has

vehemently argued that the impugned order dated 3.3.2010 as passed by the EPF Appellate Tribunal, is not sustainable in the eyes of law since the same is not based on correct appreciation of the facts as well as law, as such same deserves to be quashed and set aside. Ms. Gautam, while inviting attention of this Court to the impugned order passed by the Tribunal stated that a bare perusal of the same suggests that there is non-application of mind by the EPF Appellate Tribunal while dismissing the appeal preferred on behalf of the petitioner. She forcefully contended that the learned Tribunal below while deciding the appeal has not bothered to consider the grounds taken in the appeal. With a view to substantiate her aforesaid contention, she invited attention of the Court to annexure P-4 i.e. the appeal preferred by the petitioner before the Tribunal, to demonstrate that various grounds were raised before the EPF Appellate Tribunal pointing out therein discrepancies and illegalities having been committed by the authorities below while imposing damages and interest under Sections 14-B and 7-Q of the Act. She also stated that the perusal of the grounds of the appeal itself suggests that the learned EPF Appellate Tribunal while deciding the appeal preferred on behalf of the present petitioner failed to consider the grounds taken in the appeal, rather the appeal was decided in a slipshod manner. She stated that the learned Tribunal below has not assigned any reasons for rejecting the appeal preferred by the petitioner. Appeal has been dismissed by simply stating that the findings of the authorities below can not be looked into in the proceedings under Section 14-B, whereas, by way of appeal, specific challenge was laid by the petitioner to the Order passed by the authorities concerned under Sections 14-B and 7-Q of the Act. In the aforesaid background, Ms. Gautam prays that the present petition deserves to be allowed after setting aside orders passed by the learned EPF Appellate Tribunal below.

7. Mr. Rahul Mahajan, Advocate, representing the respondents, supported the impugned order passed by the learned Tribunal. Mr. Mahajan vehemently argued that there is no illegality and infirmity in the orders passed by the appellate Court because, admittedly, applicability of the Act, if any, could not be determined by the appellate Court in the appeal preferred by the present petitioner. He also stated that the orders, if any, passed under Section 7-A of the Act by the authorities could not be seen by the appellate authority while dealing with the appeal preferred by the petitioner against order passed by the authorities under Sections 14-B and Section 7-Q of the Act. Mr. Mahajan further forcefully contended that despite several notices, petitioner-college failed to pay the amount of Rs. 38,62,372, on account of provident fund dues, and, as such, the petitioner-College was rightly imposed penalty and damages with costs under Sections 14-B and 7-Q of the Act. With a view to substantiate his aforesaid argument, he invited attention of this Court to various documents placed on record to demonstrate that provident fund is due from the petitioner-college from April, 1995 to February, 2005 and till date, despite several opportunities, the petitioner-College has not deposited the amount. As such, there is no scope of interference by this Court as far as impugned order passed by the learned EPF

Appellate Tribunal is concerned. He prayed for the dismissal of the writ petition.

8. I have heard the learned counsel for the parties and also gone through the record carefully.

9. After going through the record made available, especially impugned order dated 3.3.2010 passed by the learned EPF Appellate Tribunal, this Court has no hesitation to conclude that the impugned order dated 3.3.2010 passed by the EPF Appellate Tribunal is without application of mind. A bare perusal of the impugned order suggests that the same is cryptic and has been passed in a slipshod manner by the Tribunal without advertng to the grounds taken in the appeal by the present petitioner. Rather, this Court is compelled to observe that the impugned order passed by EPF Appellate Tribunal does not make any head or tail. It is not understood that how the EPF Appellate Tribunal while deciding the appeal filed by the petitioner could apply the ratio of law laid down in Rupmali Madhya Pradesh Handloom Weavers Co-operative Society v. H.P. Trivedi reported in 2006 LAB IC page 279, because said case relates to the award passed by the Industrial Tribunal in reference petition. Moreover, the learned EPF Appellate Tribunal while applying aforesaid law has nowhere discussed that in what manner the aforesaid judgment is applicable in the facts and circumstance of the present case. Similarly, it is not understood that how the Tribunal came to the conclusion that by way of appeal preferred before it, petitioner has laid challenge to the proceedings, if any, initiated under Section 7-A. Rather, a close scrutiny of the appeal filed by the petitioner itself suggests that a specific challenge was laid to the order passed by the authorities under Sections 14-B and 7-Q of the Act.

10. In view of the above, this Court, without advertng to the merits of the case, deems it fit to remand the case back to the learned EPF Appellate Tribunal for deciding the same afresh.

11. Consequently, in view of the detailed discussion made herein above, the present petition is allowed with a direction to the EPF Appellate Tribunal, New Delhi to decide ATA No. 834(17)2008 titled M/s MN DAV Dental College & Hospital v. APFC Shimla afresh. Needless to say that the learned Tribunal while deciding the aforesaid appeal would afford reasonable opportunity to both the parties to submit evidence, ocular or documentary, in support of their respective claims. The Tribunal is further directed to pass a well reasoned and speaking order, after hearing the parties.

12. Pending applications, if any, are also disposed of.