(2017) 02 PAT CK 0020

In the Patna High Court

Case No : Letters Patent Appeal No. 278 of 2016 Arising out of Civil Writ Jurisdiction Case No. 7484 of 2013

M/s Sheela Chitra Mandir APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2017) LabLR 502

Hon'ble Judges : Hemant Gupta, ACJ and Mr. Sudhir Singh, J.

Bench : Division Bench

Advocate : Mr. Dhanendra Chaubey, Advocate, for the Appellant; Mr. Prashant Sinha, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Hemant Gupta, ACJ.(Oral)—Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 27th of November 2015 in C.W.J.C. No. 7484 of 2013 whereby, the order dated 5th of September, 2012 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi in A.T.A. No. 64(3) of 2003 was not interfered with.

3. The appellant was served with the show cause on 13th of February, 1995 in respect of non-payment of provident fund contribution. The Assistant Provident Fund Commissioner passed an order on 21st of September, 1995. The said order was challenged before this Court in C.W.J.C. No. 10006 of 1995. The said writ petition was allowed and the order dated 21st of September, 1995 was set aside and the matter was remanded back to the Assistant Provident Fund Commissioner, Bihar, Patna to decide the matter afresh after giving opportunity to the parties. It is thereafter again an order was passed on 18th of June, 1996. The said order was also set aside in C.W.J.C. No. 12044 of 1996. It is thereafter,

the Assistant Provident Fund Commissioner, Bihar, Patna passed an order on 27th of August, 2002 in which it has been found as follows :

"The attendance-cum-payment register was perused and found that it contradicts the information/report supplied by Sri Shyam Bihari Singh, Mg. Partner in respect of 16 employees. This selected register produced by the lawyer during proceeding reflecting 09 number of employees and was produced with a view to minimise the liability by depriving of other 07 genuine employees engaged in the esttt. The Act and scheme has been enacted as a social security measure for the welfare of the worker on payment of a little contribution. Thus, I came to the conclusion that the estt. Is intentionally concealing the facts and not producing the true picture of the employment strength."

4. The said order was challenged again before this Court in C.W.J.C. No. 12127 of 2002 which was disposed of by order dated 23rd of January, 2003 with liberty to the appellant to avail the remedy of appeal. The appeal was dismissed for default on 23rd of January, 2010. The said order was challenged in C.W.J.C. No. 16943 of 2010. The writ petition was dismissed but in L.P.A. No. 487 of 2011, the appeal was restored to its original file and the Appellate Tribunal was directed to restore the appeal and decide the same on its merit. Thereafter the impugned order was passed which was the subject matter of challenge in the writ petition. The Tribunal has recorded the following findings:

"The present appeal is filed to challenge the order dated 27.08.2002 passed by the APFC Bihar under Section 7-A of the Employees Provident Fund and Misc. Provisions Act, 1952. In this case, PF dues were assessed against the appellant. During the enquiry proceedings, the appellant had produced the selected records in respect of 09 employees but on verification of the statement given by Shri Shyam Bihari Singh, Managing Partner and the attendance-cum-payment register, significant contradictions were found. In the selected records furnished by the representative of the appellant did not give any justification for not including the names of 07 other employees engaged the appellant establishment. The details of the employees as given in the attendance-cum-payment register and examined by the respondent is not contracted by the appellant establishment, and the respondent authority had assessed the PF dues in respect of the left out employees. Accordingly there seems no infirmity order passed by the respondent authority. The appeal is dismissed. Copy of the order be sent to both the parties. File be consigned to record room."

5. The sole argument of the learned counsel for the appellant is that the appellant has produced the record of engagement of nine employees whereas, the Assistant Provident Fund Commissioner has found evidence in respect of 16 employees and directed the appellant to pay the provident fund dues of 16 employees. Such finding is not based on any evidence but a finding based upon the whims of the Assistant Provident Fund Commissioner. Therefore, the additional demand raised against the petitioner is not sustainable.

6. We have heard learned counsel for the parties and find no merit in this appeal. The Assistant Provident Fund Commissioner has found contradiction in the attendance-cum-payment register produced by the appellant. The categorical findings recorded is that the register was produced with a view to minimize the liability by depriving other seven employees engaged. Such is the finding of fact recorded by the Assistant Provident Fund Commissioner and affirmed by the Appellate Tribunal. Such finding has not been interfered with by the learned Single Bench as well. We also do not find that such finding of fact in respect of number of employees engaged by the establishment can be permitted to be disputed in the present Letters Patent Appeal.

7. Consequently, we do not find any merit in this appeal. It is, accordingly, dismissed.

