

(2009) 05 AHC CK 0530
In the Allahabad High Court

Nidan Kendra Thru Dr.B.M.D.Gupta

APPELLANT

Vs

Employees Provident Fund Appellate Tribunal & Others

RESPONDENT

Date of Decision : 16-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0530

Hon'ble Judges : Arun Tandon, J

Final Decision : Dismissed

Judgement

Arun Tandon, J.

Petitioner before this Court seeks quashing of the order dated 18.08.2005 passed by the Regional Provident Fund Commissioner, Varanasi whereunder the petitioner has been called upon to deposit the contribution of its employees for the period 01.04.1999 to 31.08.2005 by 15.09.2005 as the petitioner's industry was covered within the Employees Provident Fund & Misc. Provisions Act, 1952. The petitioner filed an appeal under Section 7I against the said order. The appeal was rejected under an order dated 04.10.2005.

The petitioner not being satisfied filed a recall application which was rejected under an order dated 13.03.2007. It is against this order that the present writ petition has been filed.

The order passed by the Tribunal dated 04.10.2005 and dated 13.03.2007 have been subjected to challenge in the present writ petition.

With regard to the delay in filing of the present writ petition, it is stated that the order dated 13.03.2007 was not communicated to the writ petitioner and it was obtained through an application under the Right to information Act, 2005 only on 22.01.2009 and thereafter the present writ petition has been filed. Prima facie the delay in filing of the writ petition has been satisfactorily explained.

Now turning to the merits of the present writ petition, counsel for the petitioner contends that the application which has termed as recall application in fact was

an application for modification of the order dated 04.10.2005. Such an application is legally maintainable under Section 7 (L) (2) of the Act. The Appellate Authority has illegally held that the application is not maintainable.

From the order dated 04.10.2005 it is apparently clear that the Tribunal has proceeded to hold that the appeal filed by the petitioner under Section 7I against the Coverage Notice dated 18.08.2005 was legally not maintainable inasmuch as final order of assessment has not been passed and that it is only against the final orders under Section 7A that the Appeal could be filed. The application filed by the petitioner qua the said order has been brought on record as Annexure16 to the writ petition and the relief sought as quoted in paragraph 7 reads as follows :

"Relief sought : Application most respectfully pray to pass following order :

- (i) That order dated 04.10.2005 be amended by allowing the Appeal.
- (ii) That the illegality, irregularity & arbitrariness of the order dated 18.08.2005 be corrected in view of the irregularity & illegality in passing the order.
- (iii) That any other order deemed fit by the Hon"ble Tribunal may also be passed in the interest of justice."

I am of the considered opinion that the relief as has been prayed in the aforesaid application is a clear case of review being asked for qua the order dated 04.10.2005. The petitioner is wrongly contending that such an application is a modification application inasmuch as no modification in the order dated 04.10.2005 had been prayed for. What has been prayed for is to reconsider the order dated 04.10.2005 and to set aside the order under Appeal dated 18.08.2005 which prayer was earlier refused by the Tribunal.

Counsel for the petitioner then placed reliance upon Section 7L) (2) for contending that the power of the Tribunal was vide enough to consider the application. It is worthwhile to reproduce Section 7L) (2) :

"7L(2) A Tribunal may, at any time within five years from the date of its order, with a view to rectify any mistake apparent from the record, amend any order passed by it under subsection (1) and shall make such amendment in the order if the mistake is brought to its notice by the parties to the Appeal :

Provided that an amendment which has the effect of enhancing the amount due from, or otherwise increasing the liability of, the employer shall not be made under this subsection, unless the Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard."

I am of the considered opinion that the correction of any mistake as contemplated under the said section or to amend its earlier order is only in respect of clerical and other mistakes apparent on the face of record. It is not permissible under law for the Tribunal to review or reconsider its earlier order as was prayed in the application. Consequently Section 7L(2) has no application, the Tribunal has rightly held so under the order dated 12.12.2005.

Not turning upon the merits of the order dated 12.12.2005 it may be recorded that the Tribunal has come to a conclusion that only a notice has been issued to the petitioner that he is within the coverage of the Employees Provident Fund & Misc. Provisions Act, 1952 and therefore, he may deposit the contribution for the period mentioned therein as per the order dated 18.08.2005. The Tribunal is justified in recording that as and when final orders are passed for payment of contribution by the Regional Provident Fund Commissioner, the petitioner will have an opportunity to challenge the demand so made on the ground that his unit is not covered within the said act.

The writ petition is dismissed.

However this order will not prejudice the rights of the writ petitioner to challenge the final assessment order as and when made under Section 7A both on the ground that the petitioner's unit is not covered within the provisions of Employees Provident Fund & Misc. Provisions Act, 1952 as also on the ground that the quantum worked out is not correct.