(1988) 03 RAJ CK 0013

In the Rajasthan High Court

Case No : .C.W.P. No. 410 of 1977

Oriental Agencies and Others — APPELLANT

Vs

R.P.F.C. and Another — RESPONDENT

Date of Decision : 28-03-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (1988) 1 RLW 617 : (1988) WLN 201

Hon'ble Judges : Pana Chand Jain, J;Mohini Kapoor, J

Bench : Division Bench

Final Decision : Allowed

Judgement

P.C. Jain, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ, order or direction to quash the order dated 3rd September, 1977, passed by respondent No. 1 and to restrain the respondents from recovering Rs. 20,563/- and Rs. 7,152/-, as mentioned in sub-paras (b), (c) and (d) of the prayer.

2. Put briefly, the facts of the case are that on 9th November, 1976, the petitioner received a letter dated 8th November, 1976 from the Assistant Regional Provident Fund Commissioner advising him to report compliance with the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short the PF Act). In response to the said letter, the petitioner appeared before the Assistant Regional Provident Fund Commissioner on 10th November, 1976 and explained his case inspite of this, the petitioner received a summons u/s 7A of the PF Act from respondent No. 1 to appear before him on 11th January, 1977 to produce the relevant records for the period from November 1974 to September 1976 and to produce evidence for conducting an enquiry for the determination of the liability under the PF Act. A representative of the petitioner in observance of the summons appeared before respondent No. 1. On behalf of the petitioner a note of inspection made by the Provident Fund

Inspector, dated 20th November, 1975, in the Salary Register, bearing the fact that the firm was employing 17 employees only was produced to contend that the petitioner firm was employing less than 20 employees but his contention appears to have been over-ruled as on 20th April, 1977, the petitioner received a notice dated 20th April, 1977 calling upon him to deposit contributions towards Employees Provident Fund, Employees Pension Fund, Administrative charges, Deposit Linked Insurance Fund for the month of October, 1976 to February 1977 and to submit monthly returns It is submitted that the petitioner again approached respondent No. 1, but he insisted on the compliance of the notice. The petitioner firm thereafter received a notice dated 4th May, 1977 from the Collector (Recovery), respondent No. 2, u/s 229 of the Rajasthan Land Revenue Act, 1956 to deposit Rs. 20,563/-on account of Provident Fund etc. from November 1974 to September, 1976. The petitioner again recieved a summons dated 18th August, 1977 u/s 7A of the PF Act. After making enquiries respondent No. 1 directed the petitioner to deposit Rs. 6,944/- for the months of October 1976 to May 1977 as Employer and Employees'' Share of Contribution to the Fund and Rs. 206/- as administrative charges by his order dated 3rd September, 1977.

3. Learned Counsel for the petitioner has contended that respondent No. 1 had not passed any order in the enquiry held by him in pursuance of the summons dated 8th December, 1976 u/s 7A of the PF Act and that the provisions of the PF Act are not attracted to his establishment. He has further contended that the demand for recovery without an order u/s 7A of the PF Act is without any authority of law. Further, he has challenged the order dated 3rd September, 1977 on the ground that there are less than 20 employees employed in the establishment and consequently the establishment does not fall within the purview of the PF Act.

4. Shri N.K. Jain, learned Counsel for the respondents controverting the contentions raised by Shri Kasliwal, learned Counsel for the petitioner, has submitted that an enquiry in pursuance of the notice dated 8th December, 1977 was made by respondent No. 1 and the order of determination was passed and inadvertantly the same has not been filed with the reply. As regards, the number of employees employed by the establishment, Shri Jain contended that number of employees was more than 20 as per the enquiry report, Annexure R/1, and list of employees, Annexure R/2 duly signed by the Accountant of the establishment. He further submitted that the list was prepared on the basis of the salary register and cash book, and the note to which the reference was made by Shri Kasliwal was based only on salary register. Thus, his submission is that the establishment was rightly covered under the provisions of the PF Act and when even after coverage no contributions were made there was no alteruative but to proceed for the determination of the amount.

5. We have given our thoughtful consideration to the submissions made by the learned Counsel for the parties.

6. It is true that in order to bring the establishment within the perview of the PF Act and the scheme thereof, it is necessary that 20 or more persons should have been employed in the establishment. It is only when the Regional Provident Fund Commissioner determines by an order that the establishment is covered under the PF Act and the Scheme, then he must hold further enquiry to determine the amount due from the employer after affording an opportunity of being heard to the employer.

7. In the instant case, though summons dated 8th December, 1976 was issued to appear for an enquiry u/s 7A, but there is no order of coverage or determination of the amount. There is no mention of such an order in the reply filed by respondent No. 1 and further, even the alleged order has not been filed as yet. Respondent No. 1 in the reply to the writ petition has admitted that the order dated 3rd September, 1977 was the final order for determination and was duly communicated to the petitioner. We, are therefore, of the opinion that since the recovery order (Annx. 4) was passed without an order of determination u/s 7A of the PF Act, consequently, such an order cannot stand and on this ground alone the petitioner is entitled to succeed.

8. As regards coverage of the establishment, there is enough material to prove that the petitioner''s establishment was employing more than 20 persons. There is an admission of the Accountant of the petitioner, when he put his signatures on 20th November, 1975, on the list of employees working in the establishment of M/s Oriental Agencies and further when Shri S. Kasliwal, learned Counsel for the the petitioner, made a declaration that the statutory dues to the Fund and Famtly Pension Fund were deducted from the salary of the employees for the months of October 1976 to May, 1977. We, therefore, hold that the establishment was rightly covered.

9. For the reasons stated above, we allow the writ petition and issue a writ in the nature of mandamus directing respondent No. 1 to withdraw the demand of recovery of Rs. 20,563/- and a further direction to respondent No. 2 to forbear from enforcing the said demand. However, respondent No. 1 will be at liberty to recover the dues in pursuance of the order dated 3rd September, 1977 for the months of October 1976 to May 1977 and for the subsequent period, if not paid so far. Ordered accordingly. No costs.