
(2004) 08 PAT CK 0077
In the Patna High Court
Case No : CWJC No. 69 of 2004

Pranav Chaterjee Mahavidyalaya

APPELLANT

Vs

The Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

Citation : (2004) 2 BLJR 1583 : (2005) 1 LLJ 216 : (2006) 1 PLJR 130 : (2004) 4 PLJR 432

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : B.P. Pandey and Sourendra Pandey, for the Appellant; R.B. Verma, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.

1 .This application has been filed for quashing the order dated 9.7.2003 passed by the Regional Provident Fund Commissioner whereby, in exercise of the power u/s 14B of the Employees' Provident Fund and Miscellaneous Provision Act, 1952 he imposed penal damage of Rs. 3,75,434/- and the consequential steps taken for its recovery.

2. In view of the order which I propose to pass in this writ application, it is inexpedient to give in detail the facts of the case. Suffice it to say that the petitioner earlier came to this Court questioning the imposition of penal damage which was registered as CWJC No. 11249 of 1998, Pranav Chatterjee Mahavidyalaya v. The Regional Provident Fund Commissioner and Ors. This Court, by order dated 6.9.2002 (Annexure-2), disposed off the writ application with the following observation :--

"This writ petition is accordingly disposed of with the observation that the respondent authorities may satisfy themselves on the basis of affidavits of the

concerned individual employee that they were willing and ready to forgo their claims and on that basis drop their demand for penal damage of Rs. 3,75,434/- and any other charges in the light and to the extent of waiver made by the individual concerned employees. The petitioner will file the affidavits of the concerned individual employees within one month from today and a final order in the light of those affidavits will be passed by the concerned authority within two months thereafter."

3. The Regional Provident Fund Commissioner, hereinafter, referred to as the Commissioner, aggrieved by the aforesaid order, preferred LPA No. 1219 of 2002, The Regional Provident Fund Commissioner and Anr. v. Pranav Chatterjee Mahavidyalaya, Buxar, before this Court. This Court by order dated 2.12.2002, dismissed the appeal observing as follows:--

"In the circumstances, it will not be appropriate for this Court to express anything on merits. Whether the Regional Provident Fund Commissioner is entitled to waive the penalty, can reduce the penalty and interest is a matter which has to be looked into. The appeal is misconceived."

4. In the light of the aforesaid orders of this Court, the Commissioner, by the impugned order, imposed penal damage of Rs. 3,75,434/-.

5. It is the stand of the petitioner that as the Employees Provident Fund Tribunal is not functional and therefore, the remedy, if at all, before the Tribunal, cannot be availed. This has not been disputed by the counsel for the respondents.

6. Mr. B.P. Pandey, Senior Advocate, appearing on behalf of the petitioner raises a very short point. He submits that the Commissioner had passed the order without giving to the petitioner adequate opportunity. He points out that the Commissioner fixed the first date of hearing in the matter on 4.2.2003. Thereafter the case was adjourned to 27.3.2003, and notice of the said date was sent to the petitioner by registered post from Patna on 25.3.2003 which was received at the Head Post Office at Buxar on 28.3.2003 and was delivered to the petitioner on 29.3.2003 and hence, the petitioner's representative did not appear on that date. He points out that after the receipt of the notice, by letter dated 31.3.2003, petitioner informed to the Commissioner about the reason for non-appearance and on the next date fixed i.e. 5.5.2003, the petitioner appeared but the matter was not taken up. Thereafter, the next date fixed in the case was 24.6.2003 and on that date prayer on behalf of the petitioner for adjournment was made on the ground of engagement of its counsel in the High Court. Said prayer was declined and the Commissioner passed the order dated 2.7.2003.

7. Mr. R.B. Verma, however, appearing on behalf of the respondents submits that the petitioner was given sufficient opportunity and in case it did not avail the said opportunity, it has to blame itself for that.

8. Having considered the rival submission, I find substance in the submission of Mr. Pandey. It is not in dispute that the notice for the date 27.3.2003 was sent on

25.3.2003 which was received by the petitioner after the said date on 29.3.2003. Thereafter, on 5.4.2003 petitioner appeared but matter was not heard. On the next date fixed i.e. 24.6.2003, prayer for adjournment of its counsel in the High Court. In my opinion, the conduct of the petitioner was not such that adjournment sought for was fit to be refused. Hence, I am of the opinion that the petitioner was not given adequate opportunity to represent its case and as such the impugned order cannot be allowed to stand.

9. Petitioner shall appear before the Commissioner on 18th of August, 2004 who will hear the petitioner and pass appropriate order in accordance with law.

10. In the result, the application is allowed, the impugned order dated 9.7.2003 (Annexure-8/2) set aside so also the consequential steps taken for its recovery. In the facts and circumstances of the case, there shall be no order as to cost.