
(2013) 01 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 2148 of 2012 (O and M)

Prestolite of India

APPELLANT

Vs

Central Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 14-01-2013

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 8

Citation : (2013) 137 FLR 574 : (2013) 3 LLJ 43 : (2013) LLR 453

Hon'ble Judges : A.K. Sikri, C.J.;Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Pankaj Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The appellant challenged the show cause notices dated 25.2.1992 and 6.3.1992 issued by the Regional Provident Commissioner, Faridabad u/s 8 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act") demanding a sum of Rs. 8,69,662 towards Employees Provident Fund Contribution and Family Pension Fund Contribution for the period from November 1979 to August 20, 1983. During the pendency of the writ petition, admittedly, more than Rs. 6,09,000 were deposited by the appellant out of the total recovery of Rs. 8,69,662.

2. Learned counsel for the appellant has argued that no notice regarding recovery u/s 14-B of the Act was issued to it, but he could not show from the record much-less the writ petition that the said issue was ever raised before the Writ Court which is now sought to be raised in this appeal.

3. While dismissing the writ petition, following observations have been made by the learned Single Judge:-- It is also stated that the petition is also liable to be dismissed on account of delay and laches as the order of assessment framed for the period from 1980 till 1984 has been impugned in the year 1991. The copy of the order passed by this Court is annexed with the reply as Annexure R-1. Some

of the employees of the petitioner-company had approached this Court by way of writ petition. This Court had then noticed the inaction on the part of the State leading to denial of justice for the workers. The Court had noticed in very clear terms that the delaying tactics adopted by the respondent (the petitioner herein) in clearing the dues of provident fund of the employees not only amount to denial of justice but added to apathy of the State machinery, which is found moving at snails speed to recover the dues by coercive process. This is found to have added to the miseries of the poor labour class. The petitioner, who was impleaded as respondent No. 3 in the said writ petition was found to have failed to deposit employer's contribution towards the provident fund but even did not deposit the employees' contribution deducted by them. The Court observed, in this order, that prima facie the employers had intentionally misappropriated the employers' contribution. Having made such strong observation, the Court also recorded that the respondent/State machinery has failed to implement the provisions of the Act and has been unable to get any relief for the employees. The Court felt so moved by these circumstances that it had observed that it cannot restrain itself from making observation even about the attitude adopted by the respondent No. 3 (who is the petitioner) which smacked of an attempt to delay the recovery of dues. The Court issued the following directions:

In view of the facts and circumstances that a lock out was declared in the factory as far back as 1983, the employees' contribution towards provident fund was not deposited by the respondents since 1977-78 by respondent No. 3 much less the owner/employer's contribution. Even the deductions made from the wages of the employees have not been recovered from the employer. The employees have been running from pillar to post to recover their provident fund but with no result. In view of the peculiar facts and circumstances of this case, we direct respondents No. 1 & 2 to take suitable effective steps including the coercive process to recover the provident fund of the employees of respondent No. 3 within three months and report the steps taken along with the result, to this Court within a month thereafter. The writ petition stands disposed of accordingly with the above observations. However, in view of the attitude adopted by the respondents the respondent No. 3 is directed to bear the costs of this petition, assessed at Rs. 3,000.

In view of this, the impugned notices were issued to the petitioner. Still the petitioner was able to avoid the liability for all these years and has failed to deposit the amount. Counsel for the petitioner, however, submits that sum of Rs. 6 lakhs has been deposited out of odd Rs. 8 lakhs, which was demanded as per the notices. The net effect of all these is that the money required to be paid to the employees have been kept by the petitioner for all these years.

I do not see any justification to call for interference in the notices merely on some technical pleas as raised by the counsel for the petitioner. All these requirements of the statute should have been pointed out by the petitioner before the Division Bench when it passed the order, Annexure R-1. Having failed

to defend the plea raised by the employees, it is too late for the petitioner to now contest the same. Rather the case is made out for direction to immediately recover the remaining amount alongwith the interest, as per the statute.

The writ petition is, accordingly, dismissed.

After hearing learned counsel for the appellant in detail and perusing the record, we do not find any error in the order of the learned Single Judge who has taken into consideration various aspect of the matter while dismissing the writ petition. Hence, the present appeal is found to be without any merit and the same is hereby dismissed.