
(2017) 01 KL CK 0030
In the High Court Of Kerala
Case No : WP(C).No. 16501 of 2010 (K)

Prof. Stanlo Johnes, S/o. Johnson, Thiruvananthapuram	APPELLANT
Vs	
The Regional Provident Fund Commissioner	RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

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

Citation : (2017) 2 CLR 98 : (2017) 2 LLJ 269

Hon'ble Judges : Mr. Devan Ramachandran, J.

Bench : Single Bench

Advocate : Sri. R.T. Pradeep, Advocate, for the Petitioner; Sri. N.N. Sugunapalan, SC, P.F, Advocate and Smt. T.N. Girija, SC, EPFO, for the Respondent No. 2

Final Decision : Disposed off

Judgement

Devan Ramachandran, J.—The petitioner, who is the Honorary Manager of a School by name Samuel L.M.S.Higher Secondary School has impugned Ext.P9 order, issued by the Assistant Provident Fund Commissioner under the provisions of Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act"). As per this order, the petitioner's school has been found to be covered by the provisions of the Act and determination has been made as to the amounts to be paid by them under the provisions of the Act.

2. The essential claim of the petitioner is that they do not employ more than 10 people in their school so as to bring them under the coverage of the Act. The petitioner, therefore, impugnes Ext.P9 as being wholly without jurisdiction and having been issued in excess of jurisdiction by the competent authority.

3. I have heard Sri. R.T. Pradeep, the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

4. The facts of this case has a history. It appears that, on an earlier occasion

when this school was determined to be under the coverage of the Act, they had challenged it before this Court. However, this Court had refused to interfere at that stage noticing that the challenge had been made several years after the determination and it was thus found to be stale. The judgment delivered by the learned Single Judge has been exhibited as Ext.P7, which was carried in appeal, leading to Ext.P8 judgment of the Division Bench. The Division Bench, as per the said judgment dismissed the appeal, but reserved liberty to the petitioner ordering that "if fresh proceedings are initiated as per Ext.P6 as submitted by the counsel for the appellant/petitioner, it is open for him to put forth all his objections irrespective of Exts. P3 and P5".

5. The learned counsel for the petitioner says that therefore, the question as to whether the school is covered or otherwise is also a matter that ought to have been considered by the competent authority in terms of the directions contained in Ext.P8 judgment. I notice that the constitutive foundational basis of the petitioner's claim that this school is not covered by the Act is that they have only 8 employees and hence beyond the rigour of the Act. However, what is to be observed is that even though the petitioner says that he has only 8 students, the specific stand of the competent authority under the Act is that the petitioner's school has more than 48 employees and would therefore, come under the sweep of the Act. The primary point of departure in the claim of the petitioner and the finding of the authority is based on the fact that the school in fact has a high school section also. According to the learned counsel for the petitioner, the high school section is an aided school under the provisions of the KER, whereas the Higher Secondary section is an unaided institution allotted to them by the Government under a policy of education. He, therefore says that the High School section and Higher Secondary section are two distinct independent institutions, which have absolutely no connection with each other. According to him, the Competent Authority did not consider this at all but proceeded on the premise that these two sections are part of the same school and that, therefore, the employees of the Higher Secondary would also be employees of the High School and vice versa.

6. Aucontraire, the learned counsel appearing for the respondents would submit that the question as to whether the petitioner's establishment was covered by the Act had already been considered in the earlier proceedings and therefore, no further consideration of that issue was required while Ext.P9 order was issued. She would also submit that notwithstanding the objection, Ext.P9 order is one that could have been appealed against by the petitioner but he has chosen not to do so. According to the learned counsel, the fact that the petitioner had approached this court without challenging Ext. P9 statutorily would impede against any further orders to be issued in this Writ Petition.

7. I have examined Ext.P9 order. It is recorded therein that the petitioner has disputed the coverage of the establishment and that consequently an enquiry under Section 7A was conducted. According to the Authority, the earlier order

holding the petitioner's establishment to be covered by the Act had already attained finality and therefore, according to him, no further determination was necessary. There is an obvious flow in this reasoning because the earlier determination had been challenged by the petitioner, which led to Exts. P7 and P8 judgments. As I have already noticed above in Ext. P8 judgment, the Division Bench of this Court permitted the petitioner to raise all contentions against any further proceedings, irrespective of the earlier determinations namely Exts.P3 and P5 shown in the said judgment.

8. In such view of the matter, it would have been certainly appropriate for the Authority to consider the claim of the petitioner that they are an independent entity without any connection-financial, managerial or administrative with the High School section and that these two sections are independent of each other and operating as separate autonomous institutions.

9. I must certainly add that I have not considered any of the contentions of the petitioner on its merits. I am not proposing to enter into a finding as to whether these two institutions are independent of each other or if they are autonomous to each other. I only notice that this is the submission and the contention taken by the petitioner before the Authority and before this Court. I am of the firm view that this specific aspect should have been considered by the Competent Authority.

10. I notice that this writ petition was admitted by this Court as early as in the year 2010 and that the petitioner had already been granted an interim order as prayed for. In such circumstance, since this Court had already exercised its discretion in admitting the writ petition and granting an interim order, it would only be appropriate to direct that the petitioner to invoke the alternate remedy that is available to him by way of a statutory appeal, since all issues raised in this writ petition could be agitated by him more effectively, especially since many of the questions are in the realm of contested facts which this Court under Article 226 of the Constitution of India cannot devolve into.

11. It would therefore, be necessary to avoid limitations in filing such appeal that the period during which this writ petition was pending and until such time as the petitioner receives a copy of the judgment, be excluded for calculating the period of limitation so as to entitle the petitioner to prefer an appeal against Ext.P9.

12. In such circumstances, I dispose off this writ petition granting liberty to the petitioner, to prefer an appeal before the competent appellate authority under the Act against Ext.P9 within a period of 15 days from the date of receipt of the copy of this judgment. If the petitioner prefers such an appeal, obviously it would be treated as having been instituted validly and it will be considered on its merits as per the prescriptions in the relevant statute and decision be taken by the Appellate Authority, after affording an opportunity of being heard to the petitioner.

13. This exercise shall be completed by the competent Appellate Authority within a period of three months from the date on which the petitioner prefers an appeal

in terms of the directions contained in this judgment. It goes without saying, that any proceedings pursuant to Ext. P9 will stand deferred until such time as final orders are issued and communicated to the petitioner by the competent the Appellate Authority.

This writ petition is ordered as above. In the facts and circumstance of this case, I make no order as to costs and I direct the parties to suffer their respective costs.