
(2004) 02 AHC CK 0101
In the Allahabad High Court
Case No : C.M.W.P. No. 5914 of 2004

Raghubir Bal Mandir

APPELLANT

Vs

Assistant P.F. Commissioner and Another

RESPONDENT

Date of Decision : 19-02-2004

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A(4), 7B

Citation : (2004) 3 AWC 2153 : (2004) 101 FLR 335 : (2004) 2 LLJ 787

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : M.K. Gupta, for the Appellant; Satish Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Present petition arises out of proceedings under the provisions of the U.P. Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). By an ex-parte order dated March 8, 2003, passed u/s 7-A of the aforesaid Act, the petitioner was asked to deposit a sum of Rs. 23,33,370/-. As a sequel thereto, the petitioner filed application u/s 7-A(4) of the Act attended with the prayer to set aside the same on the premises that the order was ex-parte studied with a further prayer that the matter may be heard and decided on merits after affording opportunity of filing reply. The affidavit accompanying the said application embodying reasons for non-appearance was also filed.

2. By the impugned order (Annexure-1 to the petition), the application filed by the petitioner came to be rejected ostensibly treating the application to be u/s 7-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The learned counsel for the petitioner drew attention of the Court that as a matter of fact application made by the petitioner for setting aside the ex-parte order was intended under the provisions of Section 7-A(4) of the Act and not u/s 7-B of the Act as the authority misconstrued it and thus the authority concerned

fell into error in treating this application under the provisions of Section 7-B of the Act and in the ultimate analysis, erroneously rejected the same. He canvassed that sufficiency of cause for non-appearance could be urged as the only ground for setting aside any order passed ex-parte while provisions u/s 7-B of the Act envisages review on merits on the discovery of new and important matter or evidence or on account of an error apparent on the face of record which according to the learned counsel for the petitioner was not the intendment of the application made by the petitioner nor review on merit was sought by the petitioner. He finally urged that cause shown for non-appearance was sufficient but the authority concerned wandered off and did not apply mind in correct perspective and fell in error in rejecting the application. Per contra, Sri Satish Chaturvedi, learned counsel appearing for Asstt. Provident Fund Commissioner contended that order was rightly passed and it was passed in accordance with law.

3. In the above perspective, I feel called to scan the two provisions in its essential details and consequently provisions of Section 7-A(4) and Section 7-B are excerpted below:

"7-A(4). Where an order under Sub-section (1) is passed against an employer ex-parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the enquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.- Where an appeal has been preferred under this Act against an order passed ex-parte and such appeal has been disposed otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex-parte order."

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"7-B. Review of orders passed u/s 7-A.-(1) Any person aggrieved by an order made under Sub-section (1) of Section 7-A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order:

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground."

4. Having considered the matter in all its ramifications and upon a consideration of the provisions aforestated, I am of the considered view that application filed by the petitioner was in fact made u/s 7-A(4) of the Act. It transpires from a perusal of the application and affidavit accompanying thereto that it was made attended with the prayer to set aside the ex-parte order and in seeking the relief relevant facts showing sufficiency of cause were unfolded in the accompanying affidavit. The application does not give appearance of any intendment of being u/s 7-B of the Act. It appears that the grounds urged in numerical order in the application were taken to be new and important grounds by the authority concerned who mistook the application u/s 7-B of Act. From a perusal of the impugned order; it is evident that the authority misconstrued the entire situation and proceeded to reject the application assuming it to have been made under the provisions of Section 7-B of the Act. Besides, the order does not deal with cause for non-appearance and instead the authority proceeded to hold that the petitioner had been accorded ample opportunity. It is also borne out from the record that the initial order against which application u/s 7-A was made itself gives manifestation of its being an ex-parte order. In the above conspectus, I have no hesitation to hold that the authority as stated supra, misconstrued the situation and proceeded perfunctorily and without delving deep into the matter, rejected the application assuming it to be made u/s 7-B of the Act. In view of the fact that since authority assumed the application to be u/s 7-B of the Act, it did not record any finding on the aspect of sufficiency of cause and proceeded to pass the order treating the application u/s 7-A of the Act.

5. As a result of foregoing discussion, the petition succeeds and is allowed and the impugned order is quashed. The matter is relegated to the Authority concerned to decide the application u/s 7-A(4) of the Act afresh and pass appropriate order after giving opportunity of being heard to the parties concerned within two months from the date of production of a certified copy of this order. Pending disposal of the said application, the remittance of the amount shall be kept in abeyance.