

(2021) 02 SHI CK 0143
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 733 Of 2021

Ram Hospital Through	Vs	APPELLANT
Employees Provident Fund Organization And Others		RESPONDENT

Date of Decision : 11-02-2021

Acts Referred:

Employees' Provident Funds And Miscellaneous Provisions Act, 1952 — Section 7A, 7A(4)

Citation : (2021) 02 SHI CK 0143

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : B.C Negi, Nitin Thakur, Raman Sethi

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Notice. Mr. Raman Sethi, learned counsel appears and accepts service of notice on behalf of respondents.
2. With the consent of learned counsel for the parties, the matter is heard and disposed of without calling for reply.
3. It appears from the record appended with the writ petition that an order under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "Act") was passed against the petitioner in case No. 478/2018 on 26.12.2019. The petitioner was directed to deposit outstanding dues of Rs.8,33,301/- (Rupees eight lacs thirty three thousand three hundred and one). Aggrieved against this order, the petitioner instituted CWP No. 478 of 2020. The writ petition was decided on 28.1.2020 and was held to be not maintainable in view of efficacious alternative remedies available under the provisions of the Act. The petitioner

subsequently moved an application under Section 7-A (4) of the Act

before the competent authority for recalling of the order passed on 26.12.2019. Section 7-A (4) runs as under:-

“(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 inquiry 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 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 of 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.”

This application was dismissed by the competent authority vide order dated 31.8.2020. The short order reads as under:-

“Order under Section 7A(4) of the EPF & MP Act, 1952

Reference No. RO/SML/COMP-1/HP-4875/508 dated 5.8.2020
Dated: 31.8.2020

Before going into the merits of application, Section 7A (4) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is

quoted verbatim as below:-

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 inquiry 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 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.

Facts of the case:-

Bare perusal of the above section reveals that 7 A (4) is applicable in case of ex-parte order. However in the present case order is not

passed ex-parte but sufficient opportunity is given to the establishment & its owner as given below.

Total eleven hearing were conducted during the course of inquiry as can be seen in the given 7A order in which responded appeared on

three appearances. In one such hearing on 12/09/2019 even Mr. Ankur Chauhan, Managing partner of the establishment appeared, so it is

not correct to portray that order is ex-parte order.

Use of phrase, "none appeared nor any communication received on behalf of the establishment" be seen in the context of last date of

hearing which was properly informed to the representative of the establishment on 21/11/2019 i.e on a hearing date before last date of

hearing.

Any more laxity given to the employer could have unnecessarily hampered the interest of the employees for whom benefits of provident fund

has been created, if these employees who are at the lower state of society are not given pf benefits then the whole purpose of creating, EPF

will be defeated.

Hence, applications under 7A (4) is rejected on the ground that sufficient opportunity is already provided to the establishment and

establishment is directed to deposit dues immediately."

4. A perusal of the above order reveals that it has been passed without giving any opportunity of hearing to the petitioner to present his case in support

of his prayer(s) made in application preferred under Section 7-A (4) of the Act. The principles of natural justice has not been complied with while

deciding the said application moved by the petitioner. This factual position is not even disputed by the learned counsel for the respondents.

Accordingly, the impugned order dated 31.8.2020 is quashed and set aside. The parties through their learned counsel are directed to appear before the

authority below on 5.3.2021, when a date shall be given to them for hearing the application preferred by the petitioner under Section 7-A (4) of the

Act. It is hoped and expected that the application shall be decided by the concerned authority as expeditiously as possible but not later than 30.4.2021.

Present petition stands disposed of on above terms alongwith all pending applications.