
(2012) 10 PAT CK 0002
In the Patna High Court
Case No : CWJC No. 14358 of 2008

Regional P.F. Commissioner	Vs	APPELLANT
The Employees" Provident Fund Appellate Tribunal and Another		RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Citation : (2012) 10 PAT CK 0002

Judgement

Ajay Kr. Tripathi, J.—Regional Provident Fund Commissioner, Patna is the petitioner in the present writ application. He is seriously aggrieved by an order passed by the Employees" Provident Fund Appellate Tribunal, New Delhi in ATA No. 181 (3) of 2005. The order is dated 10th January, 2008. By virtue of this order the appellate tribunal had set aside the order dated 11.2.2005 (Annexure-3) passed by the Regional Provident Fund Commissioner, Patna in purported exercise of power u/s 14B of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act). The appellate tribunal was moved by the respondent establishment against the order of levy of damages under the circumstances that the establishment was not covered by the Act or by virtue of any notification issued by the Central Government in this regard. No doubt there is a provision for any such establishment to be brought within the ambit of the Act but there are do's and don'ts provided in the statute before the provisions can be applied or an establishment brought within the domain of the petitioner even though the Act does not relate to the establishment.

2. Respondent No. 2 relied on Section 1(4) of the Act to press the point before the Appellate Tribunal, therefore, it is required to be quoted hereinbelow for ready reference:--

1. Short title, extent and application.--

(1)

(2)

(3)

(4) Notwithstanding anything contained in sub-section (3) of this section or sub-section (1) of Section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of the employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.

(emphasis mine)

3. Even the petitioner or the Provident Fund authorities are basing their case on the interpretation of Section 1(4) of the Act to establish their bona fide and their action which has been set to knot by the decision of the appellate tribunal, since it has quashed the order contained in Annexure-3.

4. Counsel for the Regional Provident Fund Commissioner submits that since the establishment made an application for its coverage as would be evident from Annexure-1, the petitioner went ahead and passed an order imposing damages and fine for non-deposit in terms of the provision contained in Section 1(4). Now the establishment cannot be allowed to wriggle out of the situation or the order of the appellate tribunal cannot be allowed to stand.

5. Counsel representing the establishment submits that they do not deny that an application was filed by them in terms of Annexure-1 under a mistaken understanding and advice but that by itself does not give powers to Regional Provident Fund authorities to jump to a conclusion or to make assessment as well as apply the provisions of the Act mechanically, without taking into consideration as to what the substantive provision contained in Section 1(4) of the Act provides. It is his stand that there was an obligation upon the Regional Provident Fund Commissioner to first verify whether an agreement was reached between the employer and majority of the employees. Only after this subjective satisfaction the next step was required to be taken, which was issuance of a notification in the Official Gazette applying the provisions of this Act to that establishment, on and from the date of such agreement or from any subsequent date specified in the agreement.

6. From a perusal of the writ application it is evident that the petitioner has done none of the above and applied the Act mechanically without any enquiry or verification with regard to existence of the agreement, having been reached between the employer and the majority of the employees and secondly without issuing any gazette notification which was sine qua non. Counsel representing the petitioner, however, informs the Court that Gazette Notification is in process and therefore, the impugned order contained in Annexure-4 is required to be set

aside.

7. This Court fails to understand the stand taken by the Regional Provident Fund authorities with regard to the dispute which is no dispute in the opinion of this Court. The Court fails to understand whether they are law by themselves or they are creature of law and are bound to abide by the provisions of the Provident Fund Act, which is a codified law for them.

8. There is a clear and categorical finding given by the appellate tribunal that the provision of Section 1(4), has not been followed. The Provident Fund authorities have failed to establish this aspect of the matter either before the appellate tribunal or before the High Court and they have made it a prestige issue to challenge the order of the appellate tribunal because they feel that it is their right to succeed in each and every case they contest or every order passed by them must be upheld, by every forum, created under the statute or the law of the land.

9. The Court deprecates the conduct of the petitioner in filing the present writ application for the sake of generating litigation and wasting valuable public time and money especially when the Court finds that the appellate tribunal has committed no error either in fact or in law per se, as would be evident from reading of Annexure-4. In fact the Provident Fund authorities are in clear breach of the law and obligation created therein.

10. Writ application is dismissed. A cost of Rs. 25,000/- (twenty five thousand) is awarded upon the Regional Provident Fund Commissioner, Patna, which is payable to the Legal Services Authority of Patna High Court within a period of eight, weeks from today for having wasted public time, money and for the fact that the Government organizations are supposed to act with certain amount of responsibility and not behave and act like a cantankerous or disputatious litigant. Writ is dismissed being totally devoid of merit.