

(2011) 12 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 1735 of 2011 (O and M)

Regional Provident Fund Commissioner	APPELLANT
Vs	
M/s. New Rialto Cinema and Another	RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Citation : (2011) 12 P&H CK 0037

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Advocate : Charanji Lal, for Mr. Kamal Sehgal, for the Appellant; H.S. Dhandi, Advocate for Respondent No. 1 and Mr. Ravi Dutt Sharma, DAG Haryana, for the Respondent

Judgement

Surya Kant, J.—The Assistant Provident Fund Commissioner, Amritsar passed an ex parte order dated 23.03.2005 (Annexure P1)

directing respondent No. 1-establishment to deposit the arrears of Provident Fund for the period from January, 2001 to July, 2004 leaving open

the issue of imposition of damages. The first respondent being aggrieved by that order preferred an appeal before the Employees Provident Fund

Appellate Tribunal who in para 12 of its order dated 31.05.2010 (Annexure P3) took notice of the plea taken by the first respondent in its appeal

that it had never employed 20 employees and as such the 1952 Act was not applicable to it. The Appellate Tribunal in para 3 of the order

acknowledged the stand taken by the Assistant Provident Fund Commissioner to the effect that the first respondent had engaged more than 20

persons without extending the benefit of EPF Act to them and in para 4 thereof, the Tribunal further took note of the fact that no argument was

advanced by the first respondent and the appeal was reserved. Thereafter paras

6&7 of the impugned appellate order reads as under :-

The main ground taken in the appeal memo is that the appellant had not engaged 20 employees. Since the applicability of the Act is challenged, the same has to be determined first. The order does not reveal that at any time, the appellant engaged 20 persons. The assessment was made by average salary of 5 employees which indicates that the establishment engaged only 5 employees as there was no material to hold that the establishment engaged 20 persons at any time. The order of the authority cannot be sustained.

Hence ordered, the appeal is allowed. The order passed by the authority is hereby set aside. Copy of order be sent to the parties.

The review application moved by the Regional Provident Fund Commissioner, Amritsar has also been turned down vide order dated 09.08.2010

(Annexure P5).

2. Aggrieved by both the orders, the petitioner has preferred this writ petition.

3. Learned counsel for the parties have been heard and the records perused.

4. In my considered view, the Appellate Tribunal committed a patent error of law while allowing the appeal and closing the matter then and there.

Suffice it to observe that in case there was a dispute between the Authorities under the Act and the establishment, namely respondent No. 1

regarding engagement of 20 or more persons in employment, the matter ought to have been remanded to the Assessing Authority to re-determine

the said question of fact after giving adequate opportunity of hearing to the establishment. The Appellate Tribunal could not have accepted the

blanket plea taken by the first respondent and that too when it was specifically controverted by the Assessing Authority under the Act.

5. For the reasons afore-stated, the writ petition is allowed in part and while setting aside the review order dated 09.08.2010 (Annexure P5), the

order dated 31.08.2010 passed by the Appellate Authority is modified to the extent that the matter is remitted to the Regional Provident Fund

Commissioner, Amritsar to re-decide the same in accordance with law and principles of natural justice.

6. The parties are directed to appear before the Regional Provident Fund Commissioner on 30.01.2012. Ordered accordingly. Dasti.