

(2017) 06 JH CK 0055
In the Jharkhand High Court
Case No : 2954 of 2004

Sumita Pritam

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 12-06-2017

Acts Referred:

[Employees Provident Funds and Miscellaneous Provisions Act, 1952](#), [Section 7A](#), [Section 7A](#), [Section 7B](#), [Section 7B](#) - Determination of moneys due from employ

Citation : (2017) 06 JH CK 0055

Hon'ble Judges : Rajesh Shankar

Bench : SINGLE BENCH

Advocate : Satish Bakshi, Rupesh Singh

Judgement

1. Heard learned counsel for the parties.
2. The present writ petition has been filed by the petitioner for issuance of writ of certiorari for quashing the orders dated 27.11.2003 and 31.03.2004 passed by the respondent No.1 under Sections 7-A and 7-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the said Act") whereby, the petitioner has been imposed provident fund liabilities even in respect of the professional doctors of RIMS, Ranchi (Rajendra Institute of Medical Sciences) and the nursing students, who were imparting nursing course in the petitioner's hospital. The petitioner has also challenged the notice of demand dated 17.05.2004, issued by the respondent No.2, in pursuance of the aforesaid orders passed by the respondent No.1.
3. Mr. Satish Bakshi, learned counsel for the petitioner, while confining his arguments on the procedure adopted by the respondent No.1 in passing the order dated 31.03.2004 in exercise of review jurisdiction under Section 7-B of the said Act, submits that the reviewing authority did not issue any notice to the petitioner in pursuance of the review petition filed by it for reviewing the order

dated 27.11.2003 under Section 7-A of the said Act. Learned counsel referred to the review petition filed by the petitioner on 18.12.2003 before the respondent No.1 (Annexure-4 to the writ petition) and submits that various factual aspects apparent on record were intended to be brought to the notice of the respondent No.1 for reviewing the order dated 27.11.2003 including the fact that in the order passed under Section 7-A of the said Act, considerable financial liabilities were fastened upon the petitioner even in respect of the visiting doctors of the RIMS, nursing students etc. and for the said factual clarification, the petitioner was ready to offer its records maintained in the hospital for inspection, however, the respondent No.1 while exercising the jurisdiction under Section 7-B of the said Act and while passing the order dated 31.03.2004, completely misconstrued the contentions raised in the review petition and proceeded to pass the said order on the presumption as if one Ms. Ratna Sarkar, Office Assistant under the petitioner, had no authority to represent the matter on behalf of the petitioner before the original authority while passing order under Section 7-A of the said Act. The said aspect was misconstrued mainly due to the reason that the petitioner was not given any opportunity to represent its case in the review proceeding under Section 7-B of the said Act.

4. Learned counsel places reliance on a judgment of this Court in the case of M/s Binod Kumar Jain, Bokaro Vs. Provident Fund Commissioner, E.P.F.O, Ranchi & Ors. [W.P(C) No. 6592/2007] and M/s Suraj Lal Singh, Bokaro Vs. Provident Fund Commissioner, E.P.F.O, Ranchi & Ors. [W.P(C) No. 6617/2007] reported in (2010) 125 FLR 172 wherein, the law as to whether an opportunity of hearing is to be provided to the review petitioner in the proceeding under Section 7-B of the said Act, has been dealt with. Paragraph 9 of the said judgment reads as under: "9. The contention of the learned counsel for the respondents that the reviewing authority had no obligation to offer any opportunity to the petitioners of being heard or to explain the matters, does not appeal to reason and appears to be misconceived. Merely because, the provisions under Section 7B of the Act, specifically provides that if the application for review is granted, then before granting, the party should be given prior notice and be heard and because such corresponding requirement has not been mentioned specifically in case where the authority concerned proposes to reject the application, it does not lay down that the petitioners should be deprived of an opportunity of being heard. The principles of equity and natural justice do certainly apply and would demand that before passing any order, which lead to civil consequences adverse to the interest of the petitioners, a reasonable opportunity has to be given to them to explain their case before passing any such order. I am satisfied from the submissions made by the learned counsel for the petitioners that reasonable opportunity of hearing has not been given to them by reviewing authority before passing the impugned order on the review application. Accordingly, both these writ applications W.P.(C) No. 6592 of 2007 and W.P.(C) No. 6617 of 2007 are allowed."

5. It is further submitted on behalf of the petitioner that the impugned order

dated 31.03.2004 passed by respondent No.1 exercising jurisdiction under Section 7-B of the said Act, is liable to be set aside by this Court primarily for the reason that the petitioner was not given any opportunity of representing its matter in the review proceeding.

6. Per contra, Mr. Rupesh Singh, learned counsel appearing on behalf of the respondents, submits that though the petitioner was not noticed before passing the impugned order dated 31.03.2004 exercising jurisdiction under Section 7-B of the said Act, yet on perusal of the same, it would be evident that the reviewing authority has considered the grounds taken by the petitioner in its review petition and therefore the order dated 31.03.2004 does not warrant any interference.

7. Having heard learned counsel for the parties and going through the relevant documents and the judicial pronouncement, I am of the considered view that the principles of natural justice, fair adjudication and equity demand that before passing any order, which leads to civil consequences and could adversely affect the interest of any party, a reasonable opportunity to present the matter before the administrative/quasi-judicial authority must be given. This issue is no more res integra, as has already been decided by this Court in the case of M/s Binod Kumar Jain (Supra).

8. It is an admitted position that the respondent No.1 before passing the order of review dated 31.03.2004 has not provided any opportunity of hearing to the petitioner and as such the said order cannot be sustained in the law and therefore the same is, hereby, quashed and set aside.

9. The respondent No.1 is directed to issue fresh notice to the petitioner on its review application dated 18.12.2003 within a period of 15 days from the date of receipt/production of a copy of this order and to proceed further in terms of the provisions of Section 7-B of the said Act after providing reasonable opportunity to the petitioner to present its matter in the review proceeding and pass appropriate order in accordance with law within a period of three months from the date of first appearance of the petitioner's representation before him. The reviewing authority shall take into consideration all the relevant facts and contentions of the petitioner set out in the review petition while deciding the same. No coercive steps shall be taken against the petitioner in pursuance of demand notice dated 17.05.2004 till the pendency of the review proceeding, which would be dependent upon the outcome of the said proceeding before the respondent No.1.

10. The writ petition is partly allowed in terms with the aforesaid observation/direction and, accordingly, disposed of.