(2009) 02 GUJ CK 0005

In the Gujarat High Court

Case No : Special Civil Application No. 14173 of 2008

T. Vishnu Mohan APPELLANT

Vs

Regional Provident Fund Commissioner and others RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Citation : (2009) 121 FLR 686

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Rajesh P. Mankad, for the Appellant; Nirmal R. Mehta, Ms. Samata for Nanavati Associates, for the Respondent

Final Decision : Allowed

Judgement

K.M. Thaker, J.—Rule. Mr. Mehta learned advocate appears and waives service of notice of rule on behalf of Respondent Nos. 1 and 2 and Ms. Samata learned advocate for Nanavati Associates appears and waives service of notice of rule on behalf of Respondent No. 3. With the consent of the parties, the matter is taken up for final hearing today.

Ms. Samata learned advocate for Nanavati Associates for Respondent No. 3 has tendered reply affidavit and same is taken on record. Mr. Mankad submitted that if the reply filed by the Respondent No. 3 necessitates any response from the Petitioner, then the same will be submitted before the Provident Fund Commissioner. He reserves the said right.

2. The Petitioner, an employee of Respondent No. 3 A.C. Nielson O.R.G. Marg Pvt. Ltd., has preferred present petition praying for below mentioned relief:

(A) The Hon''ble Court would be pleased to declare that Respondent No. 1 and its officials have miserably failed in discharge of their statutory duties in not taking any action against Respondent No. 3 on the basis of complaint dated 31st July, 2008 and Advocate notice dated 3.10.2008 at Annexure-H and I, filed by the Petitioner and further be pleased to direct the Respondent No. 1 to recover the amount of PF dues for the period 21st July, 2003 to 25th June, 2007 along with penal interest and penalty from Respondent No. 3 and place compliance report on the record of the present case.

(B) During the pendency and final disposal of the petition, the Hon''ble Court be pleased to direct the Respondent Nos. 1 and 2 to take immediate steps in the complaint at Annexure-H and I filed by the Petitioner and place the compliance report on the record of the present case.

(C) Any other and further relief which the Hon''ble Court deem fit to meet the ends of justice.

3. The Petitioner has approached Court alleging inaction on part of Respondent No. 1 Employees'' Provident Fund Organization in respect of his complaint that for the period in question i.e. from 21.7.2003 to 25.6.2007, the deduction and contribution towards provident fund qua him were not made by Respondent No. 3 employer and therefore, action may be taken against Respondent No. 3 employer. Mr. Mehta learned advocate for Respondent Nos. 1 and 2 has appeared and submitted that the grievance of the Petitioner is under consideration. Ms. Samata for Nanavati associates for Respondent No. 3 employer submitted that there is no fault or illegality on the part of the employer.

4. Mr. Mankad learned advocate for the Petitioner submitted that for the period in question i.e. from 21.7.2003 to 25.6.2007 Respondent No. 3 employer has not effected deduction and not made contribution qua him towards provident fund so far as his salary for the said period is concerned. He submitted that in view of such default on the part of the Respondent No. 3 employer, he approached Respondent No. 1 Employees'' Provident Fund Organization and made complaint and requested that necessary steps against Respondent No. 3 may be taken. Mr. Mankad learned advocate for the Petitioner submitted that the Petitioner is aggrieved because until now Employees'' Provident Fund Organization has not initiated any action against Respondent No. 3 employer.

5. Considering the aforesaid facts and submission by respective parties, the Respondent No. 1 is directed to take up the complaint of the Petitioner for appropriate consideration and if need be, the Commissioner may issue notice for hearing to the Petitioner and Respondent No. 3 and after giving reasonable opportunity of hearing to both, appropriate decision with regard to the grievance of the Petitioner regarding default in making deduction and contribution from his salary toward provident fund may be examined by Respondent No. 1, preferably within period of 3 months from today and if the Respondent No. 1 and/or No. 2 finds any substantial truth in the grievance of the Petitioner and comes to the conclusion that though deduction and contribution were required to be made, the same have not been made then appropriate steps for recovery thereof may be taken and compliance may be effected.

6. With the aforesaid clarifications and directions the petition is allowed to the aforesaid limited extent. Rule made absolute to that extent. Direct service is

permitted.