

(2011) 08 PAT CK 0018
In the Patna High Court
Case No : CWJC No. 6018 of 2010

The Assistant Provident Fund Commissioned Employees
Provident and Fund Organisation, Sub-Regional Office,
Bhavishyanidhi Bhawan, Adampur Chowk, Bhagalpur

APPELLANT

Vs

M/s K.C. Indane Seva, Kazichak

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7, 7A, 7I

Citation : (2012) 133 FLR 934 : (2012) 1 PLJR 374

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jyoti Saran, J.—Heard Mr. Jai Prakash Verma, learned counsel appearing on behalf of the petitioner. The petitioner is the Assistant Provident Fund Commissioner, Employees' Provident Fund Organisation, Sub-Regional Office, Bhavishyanidhi Bhawan, Adampur Chowk, Bhagalpur. He is aggrieved by the order dated 31.1.2007 passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal in ATA No, 437(3)/2007, whereby the learned Tribunal has allowed the appeal preferred by the respondent establishment, filed u/s 7-i of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act").

2. It is not in dispute that pursuant to an inquiry, a proceeding was initiated by the petitioner in purported exercise of the power vested u/s 7A of the Act culminating into an order dated 2.8.2006 holding the petitioner covered under the provision of the Act and requiring him to deposit the contribution as assessed in the order passed u/s 7A of the proceeding placed at Annexure-2 of the writ petition.

3. The sole respondent is a Gas Agency running in the name and style of M/s K.C. Indane Seva, having its establishment at Kazichak, Baunsi Road, Bhagalpur

and being aggrieved by the order passed by the petitioner in purported exercise of power u/s 7A of the Act, filed an appeal u/s 7-I of the Act inter alia on grounds of number of employees of the sole respondent falling much below the statutory number of 20.

4. It was the contention of the sole respondent that despite total number of employees present in the establishment of the sole respondent falling below 20, the Assistant Provident Fund Officer in abuse of statutory powers vested in him under the Act, had proceeded to hold the Act applicable on the establishment without providing the identification of the 20 workers.

5. Learned counsel for the petitioner, with reference to the findings of the Assistant Provident Fund Officer, in the order passed u/s 7A of the Act placed at Annexure-2 with reference to para-5, submits that 15 employees were accepted by the establishment itself and their names are even present in the said paragraph. It is contended that the other five persons are also mentioned by the Enforcement Officer in the said paragraph and which fulfills statutory requirement of 20 employees for the applicability of the. Act on the respondent's establishment.

6. The Tribunal having gone into the merits of the case, has allowed the appeal inter alia on grounds of there being absence for identification of the workers by the petitioner department. It has been held that the onus was on the department to establish that there were 20 employees working for the respondent establishment as on the date of the inquiry made by the Enforcement Officer u/s 7A of the Act.

7. As the petitioner had failed to establish that the respondent establishment did have twenty employees on their rolls nor any supportive documents were filed in this regard, hence, the learned Tribunal while examining the respective claims, has allowed the appeal for want of the identification of the twenty employees and for want of authentic documents supporting the claim of the department that the respondent establishment had twenty employees working under them. I find no infirmity in the order passed by the Tribunal. The writ petition is dismissed.