(2016) 01 KAR CK 0292

In the Karnataka High Court

Case No : Writ Petition No. 16595 of 2014 (L-PF).

The Officer In-Charge, APFC SRO, Mysore EPF Organisation, Sub-Regional Office, Ayathripuram II Stage, Mysore - Petitioner @HASH M/s. Adi Manor, Mysore

Date of Decision : 22-01-2016

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2016) 3 KantLJ 303

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Smt. Nalini Vcnkatesh, Advocate, for the Petitioner; Sri J. Kanikraj, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mrs. S. Sujatha, J. - This writ petition is directed against the order of the Employees Provident Fund Appellate Tribunal, New Delhi dated 27-12-2013 passed in A.T.A. No. 272(6) 2012.

2. It is contended by the petitioner that the respondent-establishment is covered under the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (the ''Act'' for short) with effect from 13-4-2007. An inquiry was initiated for the purpose of determining the outstanding amount due and the respondent was summoned to appear with supporting records and documents. Despite several notices, the respondent failed to appear. Accordingly, an order dated 24-12-2008 was passed by the petitioner determining an amount of Rs. 3,33,082/- as due from the respondent. Subsequently, respondent filed a review petition against the said order but the same was rejected. Aggrieved by the same, respondent filed Writ Petition No. 7379 of 2012 before this Court and the same was dismissed by an order dated 15-6-201.1 pursuant to which the respondent challenged the order dated 24-12-2008 passed by the petitioner before the Employees Provident Fund Appellate Tribunal (the ''Tribunal'' for short) at New Delhi in A.T.A. No. 272(6) 2012. The Tribunal after hearing the parties,

quashed the order dated 24-12-2008 passed by the petitioner-Authority, allowing the appeal filed by the respondent. Aggrieved by the said order, the petitioner is before this Court.

3. Heard Smt. Nalini Venkatesh, learned Counsel appearing for the petitioner as well as Sri. Kanikaraj, learned Counsel appearing for the respondent and perused the material on record.

4. Learned Counsel Smt. Nalini Venkatesh appearing for the petitioner would contend that the petitioner-Authority had provided several opportunities to the respondent to appear and to place the supporting documents/records for the proper assessment of outstanding provident fund contribution dues. Despite such opportunities provided, the respondent failed to appear and having no other option, the petitioner-Authority proceeded to pass an ex parte order based on the records available and more particularly, on the basis that Sri Daljeet Ram Choudhary had set-up the respondent-establishment as the sole proprietary concern from 1-4-2007 in his capacity as proprietor and he had submitted the details of 23 employees engaged by him along with the coverage proforma, Form 5-A, Business Number Proforma, Attendance and Salary Register 8/2007 etc. This establishment was later on taken over by his father Sri P. Daljeet Ram as sole proprietor with effect from 4-6-2008. This material available on record was suffice to the petitioner-Authority to determine the dues of provident fund liable to be paid by the respondent under the provisions of the Act. As such, the Tribunal without appreciating this aspect on which the petitioner-Authority has passed an order, has wrongly proceeded to hold that there was a flaw in the order passed by the petitioner-Authority for the reason that the respondent was absent during the proceedings. It is also further contended that the Tribunal utmost, should have remanded the matter back to the petitioner-Authority for fresh consideration setting aside the ex parte order. On the other hand, quashing the order of the petitioner-Authority would be detrimental to the interest of the employees who are entitled to the benefits under the provisions of the Act.

5. Per contra, learned Counsel appearing for the respondent justifies the order passed by the Tribunal and contends that the petitioner-Authority proceeded to determine the outstanding dues of Provident Fund under the Act without any basis. He further disputes the coverage of the respondent-establishment under the provisions of the Act. The earlier business carried on by Sri P. Daljeet Ram Choudhary cannot be taken as the basis as the establishment is taken over by Sri Daljeet Ram as the sole proprietor with effect from 4-6-2008, the basis adopted by the petitioner is totally wrong thus, the Tribunal setting aside the order cannot be found fault with.

6. Heard the rival submissions of the learned Counsel appearing for the parties and perused the material on record.

7. It is not in dispute that the petitioner-Authority has provided sufficient opportunity to the respondent to appear and represent his case with supporting

documents/records to determine the outstanding arrears of provident fund under the Act. Several notices were issued and the matter was adjourned from time to time. Despite providing such opportunities, the respondent has not chosen to appear before the petitioner-Authority. Hence, on the material available on record, the Authority proceeded to pass the order under Section 7-A of the Act. On further challenge to this order by the respondent before the Tribunal, in view of the observations made by the Authority, the respondent had admitted the outstanding dues, it is held that the same is contrary to the facts of the case as the impugned order was an ex parte order, and on other grounds urged by the respondent, quashed the order of the petitioner-Authority. This order of the Tribunal without providing an opportunity to the petitioner-Authority to compute the arrears of provident fund taking into consideration the actual facts to be placed by the respondent amounts to depriving the benefits of employees entitled to the benefits under the Act. This would result in financial loss to the petitioner which is a statutory body'' to disburse the employees provident fund. In such circumstances, I am of the considered opinion that it would be appropriate to set aside the order passed by the Tribunal and to remand the matter back to the petitioner-Authority to consider the matter afresh and to pass appropriate orders after hearing the respondent. All contentions urged herein are left open. The respondent is directed to appear before the petitioner-Authority on 15-2-2016 without any further notice. The petitioner-Authority shall dispose off the matter as expeditiously as possible, within a period of six months from the date of certified copy of the order.

8. Accordingly, the writ petition stands disposed off.

