

(2016) 12 MP CK 0043
In the Madhya Pradesh High Court
Case No : W.A. No. 325 of 2016

The Regional Provident Fund Commissioner-II	APPELLANT
Vs	
Sanatan Dharma Mandal Siksha Samiti	RESPONDENT

Date of Decision : 14-12-2016

Acts Referred:

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

Citation : (2017) LabLR 531 : (2017) 1 LLJ 321

Hon'ble Judges : Mr. Sheel Nagu and Mr. S.K. Awasthi, JJ.

Bench : Division Bench

Advocate : Shri C.P. Singh, Advocate, for the Respondent No. 1; Shri S.L. Gupta, Advocate, for the Appellants

Final Decision : Allowed

Judgement

1. The present intra-Court appeal assails the order of writ Court passed in W.P. No. 5845/2016 whereby petition in question has been disposed of with a direction to the respondents therein/appellants herein to consider the representation made by the petitioner vide Annexure P-6 dated 10.02.2015 by passing a speaking order.

2. The brief facts giving rise to present writ appeal are that in the first round of litigation, the respondent being aggrieved by determination of sum under Section 7-A of EPF and MP Act 1952, approached the EPF Tribunal where the appeal of the respondent was rejected thereby impelling the respondent to approach the Division Bench of this Court in W.P. No. 935/2012 which came to be decided by order dated 19.04.2012 vide Annexure P-4 to the extent of setting aside the order of tribunal and as well as order under Section 7 A and 7 Q order with direction to EPF to pass a fresh order after considering the observation made by the Division Bench in regard to Section 16- B of the Act. The competent authority, thereafter, passed the consequential order on 22.04.2013 vide Annexure P-5 determining an amount under Section 7-A in different two heads i.e. for aided employees and for unaided employees to the tune of Rs. 159372

and Rs. 401666 respectively.

3. Thereafter, the petitioner availed the remedy under Section 7-B of review which was dismissed by the reviewing authority vide Annexure P-8 dated 26.03.2014 thereby confirming the earlier order passed under Section 7-A. Thereafter, the petitioner preferred a representation (Annexure-P-6) on 10.02.2015, before the appellants herein.

4. Pertinently, there was no provision under the 1952 Act for making such a representation after passing of Section 7-B order of rejection of review and thus the appellants were not obliged to decide the same. However, when the said representation was pending, W.P. No. 5845/2016 was filed by the petitioner which came to be disposed of by the impugned order with the following directions :

"The petition is, accordingly, disposed of with the following directions:

Petitioner is directed to submit a fresh representation addressed to respondent no.2, along with all the requisite documents for consideration of the prayer made in this writ petition, together with certified copy of this order. On such representation being filed, the respondent no.2 shall consider and decide the same by a self contained speaking order within four weeks from the date of submission of the representation."

It is made clear that this Court has not expressed any opinion on the merits of the case."

5. The appellant/Employees Provident Fund Organization is aggrieved by passing of this order by primarily contending that the statutory remedy of filing an appeal under Section 7 (I) before the EPF Tribunal is available and yet the procedure unknown to law was adopted by the respondent.

6. A bare perusal of scheme under the 1952 Act clearly elicits that after passing of an order under Section 7-A determining sum against the establishment, the remedy of review under Section 7-B is available. Thereafter, both the orders under Section 7-A and 7-B and also 7-Q, if recovery is made, can be assailed before the EPF Tribunal constituted under Section 7-I where adequate machinery is provided for not only hearing the matter on the question of law but also on fact and the Tribunal is also vested with the authority to grant exemption from predeposit to the extent permissible by the Act and also of staying the order challenged before the Tribunal.

7. The learned counsel for the respondent herein has not been able to point out any jurisdictional error in the orders of the authorities passed under Section 7-A and 7-B of 1952 Act.

8. In view of above, the order of writ Court of directing appellants to decide representation (P-6) was de hors the provision of 1952 Act especially in the face of unavailed statutory remedy of filing appeal before the Tribunal under Section 7-

I of 1952 Act.

9. In view of above, the present writ appeal is allowed and the impugned order passed by the writ Court is set-aside with liberty to the respondent to approach the Tribunal in accordance with law.

10. Accordingly, this Writ Appeal is allowed to the extent indicated above.