

(2016) 09 JH CK 0032

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4927 of 2004.

**Thikedar Mazdoor Union through its President Iftikar Mahamood,
Lalpania, Bokaro - Petitioner @HASH State of Jharkhand**

Date of Decision : 22-09-2016

Acts Referred:

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

Citation : (2017) 1 CLR 859 : (2016) 151 FLR 927 : (2017) LabLR 188 : (2017)
1 LLJ 329

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Saurabh Shekhar, Advocate, for the Petitioner; Mr. Gautam
Rakesh, Advocate, for the Respondent No. 2; M/s Anoop Kr. Mehta, Amit Kr.
Sinha, Advocates, for the Respondent No. 4

Final Decision : Allowed

Judgement

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the petitioner and learned counsel for the Respondent no.2 and 4. Though Respondent no.3 has entered appearance on notice through vakalatnama but there is no representation on their behalf today.

2. Respondent no.2, Regional Provident Commissioner, Ranchi passed an order dated 30.9.1996 under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 holding that Respondent No. 3, M/s Bharat Industrial Works, Contractor of Tenughat Vidyut Nigam Ltd., Lalpania, Bokaro and Respondent no.4, Tenughat Vidyut Nigam Ltd., Lalpania, Bokaro are liable to pay a sum of Rs.9,45,216/- for the period March 1994 to July 1995 in respect of Provident Fund, Family Pension Fund, Insurance contribution and Administrative charges in respect of Contractor's employees (Annexure-4). Respondent no.3 was engaged as a Contractor through Respondent no.4. Respondent no.4 is a establishment covered under the Act of 1952 bearing Code no. BR/10148. In the said proceedings, the President of the Thikedar Mazdoor Union, Lalpania, Bokaro, petitioner herein, also participated and submitted a list of employees working

with Respondent no.3 containing their designation, date of appointment etc. Being aggrieved by the said order, the respondent no.3 assailed the same before the Patna High Court in C.W.J.C. No. 3564 of 1996(R), which however was dismissed by order dated 17.12.1996 (Annexure-5). The challenge led thereafter was also negated in L.P.A. No. 337 /1996(R) vide order dated 4.7.1997 (Annexure-5/1).

3. It appears that the establishment, Respondent no.3 herein had approached the Employees' Provident Fund Appellate Tribunal. The Tribunal vide order dated 3.10.1997 directed the establishment to file review petition before the R.P.F.C. The present impugned order dated 30.4.1998 contained in Annexure-11 has thereafter been passed by the Respondent no.2 purportedly in exercise of its review powers under Section 7B of the Act of 1952, though it seems to have erroneously referred to the provisions of Section 7-A while initiating the instant proceedings. It is the petitioner's stand as also apparent from the face of record that while exercising powers of review, respondent no.2, who was the same Officer failed to give notice to the petitioners though it was heard in the proceedings under Section 7A. Section 7B of the Act of 1952 is quoted herein below:-

"7-B. Review of orders passed under section 7-A.-(1) Any person aggrieved by an order made under sub-section

(1) of section 7-A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficiency reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order:

Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.

(2) Every application for review under sub-section(1) shall be filed in such form and manner and within such time as may be specified in the Scheme.

(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.

(4) Where the officer is of the opinion that the application for review should be granted, he shall grant the same:

Provided that,-

(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) no such application shall be granted on the ground of discovery of new

matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.

Proviso A thereof leaves no room of doubt that

(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7-A."

Proviso (a) thereof leaves no room of doubt that no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for. Section 7B contains the ground under which the review is permissible.

4. Power of review being a creature of statute is to be strictly conformed to by the authority exercising it. In the instant case, as is apparent, petitioner who was also a party before the Respondent No.2 in the proceedings under Section 7A of the Act of 1952 leading to the passing of the order dated 30.9.1996 (Annexure-4) has neither been noticed nor heard. Therefore, the impugned order at Annexure-11 dated 30.4.1998 suffers from error of jurisdiction and failure to comply the procedure laid down of previous notice upon a party in the said proceedings. Therefore, it cannot be sustained in the eye of law. Accordingly, Annexure-11 dated 30.4.1998 is quashed. The matter is remanded to Respondent No.2, Regional Provident Commissioner, Ranchi to pass a fresh order in accordance with law within strict time frame after due notice to the parties.

5. The writ petition is allowed in the aforesaid terms.