

(2006) 06 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 437 Of 2006

Trilok Singh

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 28-06-2006

Acts Referred:

Jammu and Kashmir Employees Provident Fund Act, 1961 — Section 8A

Citation : (2006) 3 JKJ 417 : (2006) 2 SriLJ 657

Hon'ble Judges : Bashir Ahmed Kirmani, J

Bench : Single Bench

Advocate : A.R.Dar, Advocates appearing for the Parties

Judgement

1. Petitioner's grievance is that on 21. 6. 2006 respondent/department issued a notice under No. JK/K2497 90 asking him to deposit Rs.

98.632/= on account of contributions to workers Provident Fund and admission charges etc. within fifteen days there from where after the matter

would be referred to the Collector for appropriate action under law.

2. It appears that prior to institution of thus petition the petitioner has instituted a civil suit which was rejected by the Civil Court for want of

jurisdiction where after he instituted a writ petition which was withdrawn with liberty to file a fresh one if need arose and that is how he has

approached the Court now.

3. The grievance projected is that aforesaid notice has been passed without conducting the requisite inquiry as envisaged under section

8A of Provident Fund Act 1961 (hereinafter to be referred to as "the Act") and was accordingly liable to be quashed. During course of submissions

at bar, learned counsel while canvassing the matter has also stated that after

issuance of impugned notice the respondent/department has not issued any other notice to him.

4. I have heard learned counsel and considered the matter. Under section 8A of the Employees Provident Fund Act, 1961, the authorized Officer may determine the amount due from an employer under any of the provisions of the Act or Scheme formulated there under after conducting such requisite inquiry as maybe deemed proper but only after giving such employer a reasonable opportunity of representing his case before him. For benefit, the relevant provisions of said Section may be quoted herein below:

Sec. 8A: Determination of moneys due from employers:

(1) Any Officer authorized by the Government in this behalf may, by order, determine the amount due from any employer under any provision of this Act or the Scheme and for this purpose may conduct such inquiry as he may deem necessary. (2). xx JK sc

(3). No order determining the amount due from any employer shall be made under subsec. (1), unless the employer is given a reasonable opportunity of representing his case.

(4). xx xc x

5. On the face of it, therefore, the provision while authorizing the concerned Officer to fix the liability of employer in terms thereof also casts an obligation upon him to conduct an inquiry in the matter and pass orders thereupon only after hearing the concerned employer which does not appear to have been done in the instant case nor is any such thing suggested by contents of the impugned notice.

6. Accordingly in order to clinch the matter and cut short the proceedings and with a view to have the matter conducted in accordance with the aforesaid provision the petition, is with agreement of learned counsel disposed of with an observation that impugned notice shall be treated as the preliminary notice to petitioner in terms of Sub section (3) above quoted, to which he shall file his reply within three weeks from now, where after the respondents may pass final orders in accordance with rules and after conducting requisite inquiry as envisaged, within a period of three weeks there from.

7. Copies of this order be sent to parties particularly respondents immediately.

All CMPs also stand disposed of.