

(2011) 08 P&H CK 0134
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 20266 of 2010

V.K. Yadav

APPELLANT

Vs

Employees' Providence Fund Appellate Tribunal and Others

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A
Employees State Insurance Act, 1948 — Section 45A, 46, 75

Citation : (2011) 164 PLR 387

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ritu Bahri, J.—On 3.8.2006 a complaint regarding the non implementation of the E.P.F. Scheme by respondent No.3-Hari Singh Public School, Rewari, was filed before respondent No 2. After verifying the facts, P.F. code was allotted to the establishment with effect from 1.1.2006. The petitioner submitted a complaint on 13.10.2006 that there were 22 to 26 employees since July 2000 in the establishment and the school was covered under the Act from July 2000 instead of 1.1.2006. Vide order dated 26.5.2009 (Annexure P1) it was held that the school would be covered under the provisions of the Act with effect from 1.5.1999. The school-respondent No.3 filed an appeal against this order. The petitioner was not impleaded as party in the said appeal and his application dated 14.11.2009 (Annexure P3) for impleading as party has been rejected vide order dated 1.6.2010 (Annexure P5).

2. Counsel for the petitioner has referred to the judgment of the Supreme Court in Fertilizers and Chemicals Travancore Ltd. Vs. Regional Director, ESIC and Others, and judgment of Bombay High Court in Mandovi Pellets Ltd. Vs. Regional Provident Fund Commissioner for Goa and Another, to contend that petitioner is a necessary party, and his application could not be dismissed. The Bombay High Court had examined the question whether in adjudication of a dispute regarding

the applicability of the Employees Provident Fund Act, the intervention of workers was permissible when they had participated in the inquiry conducted for that purpose. The Regional Provident Fund Commissioner had passed an order u/s 7A of the Employees Provident Fund and Miscellaneous Provisions Act applying the provisions of the Act to the establishment. The said order was challenged by the Management and the Worker Union made an application seeking to intervene. This application was opposed taking the ground that they had no locus standi to intervene. The application was allowed by observing in paragraph 10 as under:-

There is ample material to show that the workers had indeed participated at the enquiry. Witnesses on their behalf were also examined and cross-examined. With such effective participation, it is idle to contend that they merely had the status of witnesses and were not vitally interested in the dispute. That being the position, we are inclined to hold that the workers cannot now be deprived of an opportunity to assist the Court at the hearing of the petition.

3. The issue again came up for consideration in Fertilizers and Chemicals Travancore Limited's case (supra) where a petition was filed by the Company (employer) before the Employees Insurance Court without impleading the workman concerned. A demand notice was sent against the appellant company u/s 45-A of the Employees' State Insurance Act, 1948 in respect of the employer's contribution under the Act. The appellant challenged the said demand notice by filing a petition u/s 75 of the Act before the Employees Insurance Court, Alleppey. The Supreme Court has held that whenever a petition is filed u/s 75 of the Act the employer has not only to implead ESIC but has to implead at least some of the workers concerned (in a representative capacity if there are a large number of workers or a Trade Union representative of the said workers). If a decision is given in favour of the employer the same will be in violation of the Rules of natural justice. In paragraph 9, it has been observed as under:-

9. It must be remembered that the Act has been enacted for the benefit of the workers to give them medical benefits, which have been mentioned in Section 46 of the Act. Hence the principal beneficiary of the Act is the workmen and not ESI Corporation. ESI Corporation is only the agency to implement and carry out the object of the Act and it has nothing to lose if the decision of the Employees' Insurance Court is given in favour of the employer. It is only the workmen who have to lose-if a decision is given in favour of the employer. Hence, the workmen (or at least some of them in a representative capacity, or their trade union) have to be necessarily made a party/parties because the Act is a labour legislation made for the benefit of the workmen.

4. The ratio of the above judgments are directly applicable in favour of the petitioner in the present case.

5. The writ petition is allowed. The order dated 1.6.2010 (Annexure P-5) is set aside.