

(1997) 07 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 9976 of 1997

Yugasrestha Sovaniya Shikhyashrama	APPELLANT
Vs	
Regional Provident Fund Commissioner and Another	RESPONDENT

Date of Decision : 28-07-1997

Acts Referred:

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

Citation : (1997) 84 CLT 504 : (1999) 1 LLJ 34

Hon'ble Judges : S.C. Datta, J;A. Pasayat, J

Bench : Division Bench

Advocate : B. Rath, B. Senapati and S.N. Mohapatra, for the Appellant; U.K. Samal, for the Respondent

Judgement

A. Pasayat, J.—Grievance of petitioner in a nutshell is that its application for review in terms of Section 7B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short "the Act") has not been disposed of as yet and coercive action is being taken for recovery. Earlier petitioner came before this Court questioning initiation of proceedings u/s 7A of the Act. In O.J.C. No. 8679 of 1995 disposed of on December 14, 1995, directions were given to approach the authority raising question of jurisdiction. An adjudication has been made fixing liability and consequentially notice of demand Annexure-3 has been issued. Petitioner's case is that an application for review (vide Annexure-4) has been filed which is pending and has not been disposed of. A statement is made that the opposite party No. 2 before whom the matter is pending is of the view that no review is permissible under the Statute.

2. Mr. U.K. Samal, learned counsel for the opposite parties has submitted that the impugned order is appealable as is evident from Section 7D of the Act, and further by notification dated June 30, 1997 a copy of which has been filed, issued by the Ministry of Labour in exercise of power conferred by Sub-section (1) of Section 7D of the Act, the Central Government has constituted Employees' Provident Appellate Tribunal with effect from July 1, 1997 to exercise power and

discharge functions conferred on it by the Act in respect of establishments situated within the territories of India. Appellate Tribunal is to function at Delhi. It is further pointed out that Ministry of Labour, Government of India has notified, appointing the 1st day of July 1997 as the date on which provisions of Sections 11 and 25 of the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1988 (33 of 1988) shall come into force. In view of Said Sections 7B to 7D and Sections 20 to 22 of the Act shall come into force with effect from July 1, 1997, Section 7B which is relevant for our purpose reads as follows:

"7B Review of orders passed u/s 7A.

(1) Any person aggrieved by an order made under Sub-section (1) of Section 7A, 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 sufficient 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 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.

(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 u/s 7A."

3. In view of the accepted position that Section 7B of the Act has come into force

with effect from July 1, 1997, and in view of notification made by the Minister of Labour, Government of India, review application can be entertained by the prescribed authority. Let the opposite party No. 2 deal with the application for review vide Annexure-4 in the manner prescribed in law.

The writ application is disposed of.

S.C. Datta, J.

4. I agree.