

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.2264/2008**

% Date of Decision : April 03, 2008

Saroj Hospital & Heart Institute Petitioner

Through : Mr. Vinay Sabharwal,
Advocate

Versus

Employees Provident Fund
Organisation & Anr. Respondents

Through : Mr. R.C. Chawla & Mr. Witho,
Advocates

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? No
3. Whether the judgment should be reported in the Digest ? No

SUDERSHAN KUMAR MISRA, J : *(Oral)*

1. The petitioner's case is that consequent upon a summons issued to the petitioner under Section 14-B of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 on 9.3.2006, the impugned order dated 14.2.2008 has come to be passed whereby the petitioner has been directed to pay a sum of Rs.15,36,791/- towards damages under Section 14-B and interest under Section 7-Q of the said Act, in relation to non-payment of contribution regarding certain workers found to have been working with the petitioner by the officers of the

department who visited the premises of the petitioner on 24.9.2004, 27.09.2004 and 28.09.2004. Consequent upon said visits, an inspection note dated 28.9.2004 was handed over to the petitioner stating that an amount of Rs.9,38,372/- was due from the petitioner. By that note, the petitioner was also advised to deposit these dues. It appears that consequent upon this communication, the petitioner deposited the said amount of Rs.9,38,372/- the very next day, i.e., on 29.9.2004 in cash in the State Bank of India, Parliament Street, New Delhi. On 30.9.2004, whilst informing the Regional Provident Fund Commissioner of this fact through a letter, the petitioner also pointed out that the amounts demanded by the aforesaid inspection note dated 28.9.2004 did not belong to their employees. In addition, the petitioner has also stated as follows :-

“The workers deputed by the said agencies have never been our employees and no 'Master-Servant' relationship ever existed between their workers and ourselves. However, to avoid all problems and controversies and without prejudice to our rights and contentions and without admission of any liability or default on the Contract Agencies, in the PF.....”

It is, therefore, obvious that the damages in question had been deposited by the petitioner without prejudice to their rights and contentions and without admission of any liability for default on its part and with a view to avoiding all problems and controversies in future. A specific stand was also taken to the effect that the amounts demanded by the inspection note dated 28.9.2004 do not belong to the petitioner's employees.

2. Counsel for the petitioner contends that such a deposit amounts to a deposit under protest and it was incumbent upon the respondents to hold the requisite inquiry under Section 7-A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 before imposing any liability on the petitioner.

3. On the last date of hearing, Mr. Chawla appeared for respondents No.1 and 2 and sought an opportunity to file a short affidavit in response to the show cause notice and also to take instructions in the matter. The fact that the requisite enquiry under Section 7-A of the Employees Provident Fund & Miscellaneous Provisions Act was never held is not disputed.

4. Under the circumstances, the impugned order dated 14.2.2008 is quashed with a direction to the respondent to reconsider the matter afresh by holding the necessary enquiry Under Section 7-A of Employees Provident Fund & Miscellaneous Provisions Act, 1952 and to decide liability of the petitioner, if any, in accordance with law, preferably within two months from today.

5. Writ Petition is disposed of.

CM No.4357/2008

6. In view of the fact that the writ petition itself has been disposed of, this application is rendered infructuous and is disposed of as such.

Sudershan Kumar Misra, J

April 03, 2008
ib/OPN