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

Judgment delivered on: 26th November, 2014

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W.P.(C) No. 890/2011

SRI GURU TEG BAHADUR PUBLIC SCHOOL Petitioner

Represented by: Mr. Rajiv Shukla,
Mr. Shubham Saxena and
Ms. Anamika Saraff,
Advocates.

Versus

EMPLOYEES PROVIDENT FUND ORGANISATION AND ORS

..... Respondents

Represented by: Mr. Balraj Dewan, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, the petitioner School seeks setting aside of the order dated 13.10.2010 passed by the EPF Appellate Tribunal, New Delhi, and the order dated 19.09.2005 passed by the respondent No.2/Assistant Provident Fund Commissioner (for short 'Commissioner'), whereby the petitioner Establishment was directed to make compliance under all the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the EPF Act'), w.e.f. 01.02.2005, subject to the right of the Department to shift back the date of coverage if subsequently found that the Act is applicable to the Establishment from previous date.

2. Mr. Rajiv Shukla, learned counsel appearing on behalf of the petitioner Establishment submits that the petitioner Establishment had filed reply to the notice issued under Section 7-A of the EPF Act by the Commissioner, whereby stated that Smt. Sarabjit Kaur, Principal of the School, appeared before the Commissioner on 27.07.2005 and stated that the Enforcement Officer, who inspected the School on 16.02.2005, had submitted the Coverage Performa alleged to have been signed by Smt. Sarabjit Kaur, presenting herself as Principal of the School, bears names of 23 employees. In fact, there were only 15 teachers and 3 staff members in the School. It is further stated that the clerical and managerial work of the School was being done by S. Harjinder Singh and Shri Gurpreet Singh respectively, being Founder Members of the petitioner Establishment. Moreover, as per the Society Rules, no amount as salary has been given to them.

3. Moreover, there was no proof either before the Commissioner or the Appellate Authority to establish that there were 20 or more employees employed with the petitioner Establishment and getting the salaries. Despite, both the Authorities mentioned above, held that the provisions of EPF Act are applicable on the petitioner Establishment.

4. Mr.Shukla, learned counsel further submits that both the Authorities had power to summon any record in the controversy, however, failed to do so and has relied upon the Coverage Performa filed by the Enforcement Officer and accordingly passed the orders.

5. To strengthen his arguments, learned counsel for the petitioner has

relied upon a case of *Food Corporation of India Vs. Provident Fund Commissioner & Ors., (1990) 1 SCC 68*, wherein the Apex Court held as under:-

“7. The question, in our opinion, is not whether one has failed to produce evidence. The question is whether the Commissioner who is the statutory authority has exercised powers vested in him to collect the relevant evidence before determining the amount payable under the said Act.

8. It is of importance to remember that the Commissioner while conducting an inquiry under Section 7A has the same powers as are vested in a Court under the CPC for trying a suit. The section reads as follows:

“Section 7(A) Determination of Moneys due from Employer - (1) The Central Provident Fund Commissioner, any Deputy Provident Commissioner or any Regional Provident Fund Commissioner may, by order determine the amount due from any employer under any provision of this Act (the scheme or the Family Pension Scheme or the Insurance Scheme) as the case may be and for this purpose may conduct such inquiry as he may deem necessary.

(2) The Officer conducting the inquiry under Sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the CPC, 1908, for trying a suit in respect of the following matters, namely:

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses.

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code.

9. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person.”

6. On the other hand, Mr. Balraj Dewan, learned counsel appearing on behalf of the respondents submits that the petitioner Establishment was summoned by the Commissioner to represent their case on 20.05.2005, 22.06.2005, 15.07.2005 and 27.07.2005. However, on 27.07.2005, Smt. Sarabjit Kaur, Principal and Shri N.R. Kaushal, Advocate, appeared on behalf of the petitioner Establishment and attended the proceedings under Section 7-A of the EPF Act pending before the Commissioner. On the said date, Smt. Sarabjit Kaur submitted that there were only 15 teachers in the School. She refused to identify her signatures appended on the Coverage Performa. Whereas, Shri Kashmir Singh, Enforcement Officer, submitted that the responsible person sitting in the office of the petitioner

Establishment himself showed the Attendance Register and the names on the Coverage Performa were filled up by a Clerk of the School on the directions of the responsible person. He further stated that the Coverage Performa was filled and stamped in his presence. However, submitted that he had not verified physically the strength of the School as it was evident in the record produced before him that 23 employees had marked their attendance in the Register.

7. He further submits that to a specific query put by the Commissioner regarding names of the staff members working in the School, Smt. Sarabjit Kaur replied that there were total 19 people, 13 teachers and 6 staff members, working in the School. Accordingly, the learned Commissioner has come to the conclusion that even excluding the two persons working on honorarium; the petitioner Establishment had 21 employees, which is sufficient for applicability of EPF Act.

8. Mr. Dewan, learned counsel for the respondent submits that the petitioner Establishment neither produced any record before the Commissioner nor before the Appellate Authority to controvert the stand, however, made a bald statement that the School is having staff of only 19 persons, which is less than 20 and, hence, the same is not covered under the provisions of the EPF Act.

9. Learned counsel further submits that the School would have established his case by producing the salary record or the Attendance Register or the Bank records/accounts, but preferred not to produce the same.

10. I have heard the learned counsel for the parties.

11. Section 2(f) of the EPF Act, defines the word “employee” as follows:-

“2(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer.”

12. It is trite in case of ***Food Corporation of India*** (*supra*) that if the controversy relates to documents only, then the Statutory Authority is vested with power to call for the relevant documents before coming to a conclusion. Besides, it has power to summon the documents and ask any person to appear before it and depose on the material before determination of the amount payable under the Act.

13. On perusal of the orders dated 13.10.2010 and 19.09.2005, it is established that both the Authorities mentioned above have not summoned any material, however, directed the petitioner Establishment to establish its case and furnish the documents to controvert the stand. The Enforcement Officer presented the Coverage Performa, showing 23 employees were working in the School. The stand of the petitioner Establishment is that in the School there were only 15 teachers as stated in reply dated 03.05.2005, whereas on specific query put to Smt. Sarabjit Kaur, Principal of the School, she stated that there were 13 teachers and 6 staff members in the School. Thus, the reply and statement of the Principal of the School establishes that either the Principal of the School did not want to give the correct picture of the School or she herself was not aware whether there were 15 teachers or 13 teachers. Moreover, the petitioner Establishment had all opportunity to

controvert the material produced before the Commissioner, whereby it is stated that 23 employees were working in the said School. Admittedly, no steps were taken by the petitioner to call for record or any person as witness. In that eventuality, the learned Authorities have rightly given its opinions

14. As regards the issue, S.Harjinder Singh and Shri Gurpreet Singh, the Founder Members of the Society, cannot be considered as employees as per the Society Rules is concerned, to this effect no documentary evidence has been produced by the petitioner Establishment that they were working in the School without wages. Moreover, it is admitted by the petitioner Establishment that the aforementioned two persons are working as Clerk and Manager. Even if these two persons are excluded from the total strength of 23 staff members, still the figure comes to 21, which is sufficient for attracting the provisions of EPF Act.

15. In view of the above discussion, this Court finds no merit in the instant petition.

16. Accordingly, the petition is hereby dismissed with no order as to costs.

**SURESH KAIT
(JUDGE)**

NOVEMBER 26, 2014
sb/jg