

Shreeram Clearing & Forwarding Agency ... Petitioner
Vs.
Assistant PF Commissioner, Circle II ... Respondent

Mr. A. P. Wachasundar for Petitioner.
Mr. Suresh Kumar for Respondent.

CORAM : R. G. KETKAR, J.
DATE : 5TH MARCH, 2015

P.C. :

Heard Mr. Wachasundar, learned Counsel for petitioner and Mr. Suresh Kumar, learned Counsel for respondent at length. Rule. Mr. Suresh Kumar waives service. At the request and by consent of the parties, rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 27.01.2015 passed by the Assistant Provident Fund Commissioner, Circle-II. By that order, the Review Application dated 08.01.2015 filed by the petitioner under Section 7-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'Act') seeking review of order dated 26.11.2014 passed under Section 7-A of the Act was rejected.

3. In support of this Petition, Mr. Wachasundar submitted that without affording an opportunity of hearing, the impugned order was passed rejecting the Review Application. He submitted that the remedy of review is a statutory remedy and the opportunity of hearing could not have been denied. In support of his submissions, he relied upon the

following decisions of this Court:

- a. Order dated 27.08.2008 passed in Writ Petition No.1002 of 2008 (*Gajanan Maharaj Sansthan, Shegaon Vs. Regional Provident Fund Commissioner and others*), Bench at Nagpur;
- b. Order dated 27.04.2011 passed in Writ Petition No.2412 of 2011 (*M/s. A. B. Nagi Reddy Vs. Regional Provident Fund Commissioner, Thane*);
- c. Order dated 02.05.2011 passed in Writ Petition No.3389 of 2011 (*Lokvikas Sahakari Bank Limited Vs. The Assistant Provident Fund Commissioner*), Bench at Aurangabad;
- d. Order dated 22.03.2012 passed in Writ Petition No.6364 of 2011 (*Hotel Samudra VS. Employees Provident Fund Appellate Tribunal*).

4. On the other hand, Mr. Suresh Kumar supported the impugned order. He submitted that hearing is not contemplated while deciding Review Application. He admitted that in case the Court is inclined to set aside the impugned order and direct the Assistant Provident Fund Commissioner, Mumbai to decide the review application afresh, the petitioner may be directed to deposit 50% amount of contribution and interest as per the order dated 26.11.2014 passed under Section 7-A of the Act. In support of this submission, he relied upon decision of **Hotel Samudra** (*supra*).

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that order under Section 7-A was passed on 26.11.2014. It is also not in dispute that the petitioner instituted Review Application on 08.01.2015, well within time. Perusal of the impugned order dated 27.01.2015 shows that without hearing the petitioner, the

Review Application was dismissed on the following grounds:

“ It is observed that there is no sufficient ground for a review of your application and there is no any discovery of new evidence / information brought to the notice of the assessing authority.

Hence your review application is rejected and directed to remit entire dues as per 7A order dated 26.11.2014 immediately.”

6. Section 7-B of the Act reads as under:

“7B. Review of orders passed under Section 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 for 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 review, he shall reject the application.

(4) Where the officer is of the 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 under section 7A.”

7. Perusal of sub-section (4)(a) clearly shows that no such application shall be granted without previous notice to all the parties to appear before the Authority and for hearing in support of the order in respect of which a review is applied for. It is therefore, obvious that at the stage when review application is being considered under sub-section (3), the aggrieved party alone needs to be given a hearing to find out whether a case for review is made out or not. The contention advanced by Mr. Wachasundar is supported by the decisions referred hereinabove.

8. In view thereof, the impugned order is liable to be quashed and set aside thereby restoring the Review Application for deciding it afresh. Respondent shall hear the petitioner on its Review Application and pass fresh orders in accordance with law. Petitioner shall appear before the respondent on 16.03.2015 and the Review Application shall be decided within 2 weeks thereafter. Hence, Petition succeeds. Rule is made absolute in terms of prayer clause (b) with no order as to costs.

(R. G. KETKAR, J.)

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