

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

WP(C).No. 15600 of 2010 (Y)

PETITIONER:

PUSHPAGIRI MEDICAL COLLEGE HOSPITAL,
THIRUVALLA - 689101
REPRESENTED BY ITS DIRECTOR (HUMAN RESOURCES)
FR.SANTHOSH AZHAKATH.

BY ADVS.SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN
SRI.ARUN THOMAS
SRI.JENNIS STEPHEN

RESPONDENT:

THE ASSISTANT PROVIDENT FUND
COMMISSIONER, EMPLOYEES' PROVIDENT FUND ORGANISATION
REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN
PATTOM, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.N.N. SUGUNAPALAN, SC, P.F.
SRI.SUJIN
SMT.T.N.GIRIJA, SC,EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- P1 : PHOTOCOPY OF THE NOTICE DATED 16.4.2007.
- P2 : PHTOCOPY OF THE ORDER DATED 28.5.2007 ISSUED UNDER SECTION 7A
- P2A : PHTOCOPY OF THE REQUEST DATED 21.06.2007.
- P3 : PHOTOCOPY OF THE NOTICE UNDER SECTION 8F DATED 28.6.2007.
- P4 : PHTOCOPY OF THE COVERING LETTER.
- P5 : PHTOCOPY OF THE NOTICE UNDER SECTION 7C READ WITH SECTION 7A OF THE EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT DATED 17.06.2009.
- P6 : PHTOCOPY OF THE ORDER DATED 11.9.2009.
- P7 : W.P.(C) NO.20229 OF 2007 WITHOUT EXHIBITS
- P8 : PHTOCOPY OF THE JUDGMENT DATED 23.10.2009 IN W.P.(C) NO.20229 OF 2007.
- P9 : PHTOCOPY OF THE LETTER DATED 11.1.2010 ISSUED TO THE RESPONDENT.
- P10 : PHOTOCOPY OF THE LETTER DATED 22.2.2010 ISSUED TO THE RESPONDENT.
- P11 : PHOTOCOPY OF THE LETTER DATED 8.4.2010.

RESPONDENT'S EXHIBITS:

- R1(a) : TRUE COPY OF THE LETTER DATED 8.4.2010 SENT BY THE RESPONDENT TO THE PETITIONER.

//TRUE COPY//

P.A. TO JUDGE

K.VINOD CHANDRAN, J

W.P.(C) No.15600 of 2010

Dated this the 21st day of January, 2015

JUDGMENT

The petitioner, a hospital challenges the denial of documents , which documents are alleged to have been produced by the petitioner itself before the authorities on the basis of Ext.P8 judgment. The proceedings under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF and MP Act) was initiated against the petitioner, which concluded with Ext.P2 order. Ext.P2 order is dated 7.6.2007. Against Ext.P2, an application was filed under Section 7B which is not produced herein. The contention intended to be raised in the said application is evident from Ext.P2A communication seeking the recovery to be kept in abeyance till a 7B application is filed. The ground raised in Ext.P2A is that the Assessing Officer had found a discrepancy in the Balance Sheet, with respect to the wages paid and the corresponding

contributions to the Provident Fund Organisation. The 7B application was proposed to allay such apprehension of discrepancy.

2. A reading of Ext.P2A would indicate that what was alleged by the respondent Organisation was that, in the Balance Sheet many allowances are shown under the salary account, which would be covered under the EPF and MP Act and for which the contributions need to be paid by the employer. The employer refuted coverage of such allowances.

3. It was also contended that, submission of documents to clarify the salary amount, in the balance sheet, was sought for and the matter was adjourned; but unfortunately the Officer concluded the proceedings without further reference to the petitioner.

4. Subsequent to the application under Section 7B, the petitioner approached this Court with a writ petition contending that the proceedings under Section 7B are pending and hence the documents available with the

assessing officer should be supplied to the petitioner. This Court as per Ext.P8 judgment in W.P.(C) No.20229 of 2007 directed that the 7B proceedings should be finalised and also directed that the petitioner shall be furnished with the copies of documents which are in the custody of the 1st respondent. Pursuant to Ext.P8, the petitioner is said to have filed an application, as indicated in Ext.P9, for copies of the documents referred to in Ext.P2. The petitioner was issued with a communication, Ext.P11 furnishing the documents available with the Assessing Officer. The petitioner contends that the documents so furnished were not that referred to in Ext.P2.

5. The learned Standing Counsel appearing for the respondent Organisation however asserts that the entire documents that were available with the Assessing Officer were returned and they were merely copies and not the originals. Annexure appended to Ext.P11 was also produced across the Bar, to show that the documents available with the Officer has been listed out along with Ext.P11; which the

petitioner has failed to produce before this Court.

6. In any event it is to be noticed the documents noticed in Ext.P2, were not produced by the petitioner and were only those noticed by the squad who conducted inspection of the petitioner's establishment. A mere perusal of Ext.P2 would indicate that the documents referred therein are mostly attendance registers which were perused by the Inspection Squad. The originals of such registers definitely were not with the respondent Organisation. Further these are not relevant for consideration of the issue allegedly raised in the Section 7B application. Definitely it cannot be understood that the originals of the registers were retained by the Assessing Officer. Moreover the issue of attendance registers was, not the dispute on which the petitioner had moved the revision under Section 7B.

7. The contention which the petitioner intended to raise under Section 7B is only evident from Ext.P2A. The petitioner having suppressed the application under Section 7B, this Court will have to infer that the contention is only

that contained in Ext.P2A. Evidently the contributions made under the EPF and MP Act, fell short of the provision made for salaries under the Balance Sheet. Hence the allegation, under which Section 7A proceedings were taken, was that the actual wages of the employees were not computed for determining the PF contributions. The resultant short fall results in prejudice, to the employees and it was suspected that, there is a discernible attempt to deliberately reduce the contributions. The petitioner has to necessarily produce the documents, to substantiate the nature of allowances paid and sustain the short-fall alleged, as being outside the provisions of the Act and its coverage.

8. The petitioner cannot rely on the direction issued in Ext.P8 to contend that the documents in Ext.P2 have to be returned to the petitioner. It is not clear as to what were the documents which were retained by the Assessing Officer after hearing was conducted. The petitioner also did not have any specific claim when Ext.P8 was heard, nor did this court refer to the documents in Ext.P2. The documents

noticed in Ext.P2 were those verified by the Inspection Squad, to determine the actual number of employees and the wages paid to them. This Court in Ext.P8 also merely directed that the documents available with the Organisation will be returned.

9. Even the petitioner did not have a contention that the documents in Ext.P2, were the originals produced before the Organisation. Ext.P8 cannot be relied on to merely stall the proceedings, for all time. In such circumstance this Court finds that the above writ petition is merely a ruse to delay the proceedings before the Assessing Officer. It is also to be examined whether on the contentions raised, Section 7B review would be maintainable. There will be absolutely no purpose in keeping the above writ petition pending. The petitioner shall appear before the Assessing Officer, before whom Section 7B petition, is said to have been filed on 13.02.2015, failing which, the Assessing Officer shall conclude the proceedings and pass orders on the Section 7B petition. However, if the petitioner appears, the petitioner

shall be given a months' time to produce any documents to substantiate the plea for review and after giving an opportunity of personal hearing, the proceedings shall be concluded within a period of two months from the date of hearing.

Writ petition is disposed of. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE

//true copy// P.A. to Judge

smv