

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

WP(C).No. 35358 of 2014 (T)

PETITIONER(S)/PETITIONER:

A.K.CHANDRAN AGED 64 YEARS
S/O.KUTTAPPAN, ALLUPPA PARAMBIL HOUSE
EDAPPALLY NORTH P O, KOCHI-682024

BY ADVS.SRI.T.B.HOOD
SMT.M.ISHA

RESPONDENT(S)/RESPONDENTS:

1. EMPLOYEES PROVIDENT FUND ORGANIZATION
BHAVISHYA NIDHI BHAVAN, 14, BAHU KAIJI CAMA PALACE
NEW DELHI-110066
REP BY THE CENTRAL PROVIDENT FUND COMMISSIONER
2. REGIONAL PROVIDENT FUND COMMISSIONER
BHAVISHYA NIDHI BHAVAN, P B NO 1895, KALOOR
KOCHI-682017
3. ASSISTANT PROVIDENT FUND COMMISSIONER
BHAVISHYA NIDHI BHAVAN, P B NO 1895, KALOOR
KOCHI-682017
4. ENFORCEMENT OFFICER
BHAVISHYA NIDHI BHAVAN, P B NO 1895, KALOOR
KOCHI-682017
5. RECOVERY OFFICER
BHAVISHYA NIDHI BHAVAN, P B NO 1895, KALOOR
KOCHI-682017

R1 BY ADV. DR.S.GOPAKUMARAN NAIR (SR.)
BY ADV. SRI.A.RAJASIMHAN,SC,EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXT.P1:- TRUE COPY OF THE ORDER DTD 11/12/2013 ISSUED BY THE 3RD
RESPONDENT UNDER SECTION 7A OF THE EPF ACT
- EXT.P2:- TRUE COPY OF THE REPLY DTD 25/4/2013 SUBMITTED BY THE
PETITIONER BEFORE THE 3RD RESPONDENT
- EXT.P3:- TRUE COPY OF THE REVIEW PETITION FILED BY THE PETITIONER
- EXT.P4:- TRUE COPY OF THE APPLICATION DTD 22/12/2014 SUBMITTED BY
THE PETITIONER FOR COPY OF THE ORDER REJECTING EXT P3
REVIEW PETITION
- EXT.P5:- TRUE COPY OF THE NOTICE DTD 13/11/2014 ISSUED TO THE
PETITIONER BY THE 4TH RESPONDENT ENFORCEMENT OFFICER
- EXT.P6:- TRUE COPY OF REPRESENTATION DTD 8/12/2014 SUBMITTED BY
THE PETITIONER BEFORE THE 2ND RESPONDENT
- EXT.P7:- TRUE COPY OF THE DEMAND NOTICE DTD 31/7/2014 ISSUED BY
THE 5TH RESPONDENT RECOVERY OFFICER

RESPONDENT(S) ' EXHIBITS

ANNEXURE R(1) COPY OF THE PROCEEDINGS UNDER SECTION 7B OF THE ACT

//TRUE COPY//

P.A TO JUDGE

vdv

A.M.SHAFIQUE, J

W.P.C.No.35358 of 2014

Dated this the 4th day of December 2015

J U D G M E N T

This writ petition is filed challenging Ext.P1 order issued by the Assistant Provident Fund Commissioner under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') and for further consequential reliefs.

2. The short facts involved in the writ petition would disclose that the petitioner, being a proprietor of Manpower supply services under the name and style Ex-Servicemen Ideal Security Agencies, was served with Ext.P1 order dated 11/12/2013 issued by the 3rd respondent under Section 7A of the Act and the petitioner was directed to remit an amount of 15,32,870/-. According to the petitioner, the order was passed in violation of the principles of natural justice and that the materials relied upon by the authority have not been served on him. Petitioner contends that the allegation in Ext.P1 order that the staff employed by Fisheries Survey of India are excluded employees as their wages were above 6,500/-. No materials are

made available in the order in order to arrive at such a finding. Though the petitioner filed a review petition under Section 7B of the EPF Act, he could not take necessary measures to pursue the same and when enquiry was made by submitting an application for receiving a copy of the order in the review petition, the petitioner was faced with demand notice, Ext.P5 dated 13/11/2014. Though petitioner submitted a representation to the Regional Provident Fund commissioner requesting to recall and reconsider Ext.P1 order, no action was taken and again he was served with Ext.P7 demand notice dated 31/07/2014. Petitioner therefore approached this Court for the reliefs aforesaid and to forbear from taking any further action in the matter.

3. Statement is filed by learned Standing Counsel appearing for respondents 1 to 5 inter alia stating that, it is on the basis of a complaint signed by certain employees in the establishment, that an investigation was conducted. It was reported by the petitioner that 6 employees engaged in Fisheries Survey of India were drawing more than Rs.6,500/- per month and hence they were excluded employees. Fisheries Survey of India had submitted details on request and it was found that their

employees ought to have been covered. It is also stated that enquiry under Section 7A of the Act was conducted after giving notice. The proprietor of the firm appeared for enquiry and produced the wages register. After conducting appropriate enquiry into the matter, it was understood that the establishment was not maintaining proper records and the records produced at the time of inspection were not reliable. It was also reported that eligible employees of the employer was not employed for certain period. It is, after conducting proper enquiry in the matter, that Ext.P1 had been issued. The petitioner also preferred review of the application under Section 7B of the Act. The review petition was also considered after notice to the petitioner. However, on the adjourned date, there was no appearance. Though the matter was adjourned on several occasions, no additional materials were produced and accordingly by proceedings dated 26/06/2014, the review petition was also dismissed as per Annexure R1. Respondents also denied the contentions urged on behalf of the petitioner.

4. Heard the learned counsel on either side. The main issue raised by the petitioner is regarding the finding of the EPF

authorities regarding the wages of employees deployed in Fisheries Survey of India. According to the Assistant Provident Fund Commissioner, the issue is with reference to the salary structure of the employees deployed to Fisheries Survey of India. Petitioner contended that the salary exceeds Rs.6,500/- whereas, according to the Assistant Provident Fund Commissioner, in terms of the report of the Enforcement Officer, the wage for each employee is only Rs.5,880/-. According to the learned counsel for the petitioner, the enquiry report was not served on him. However, it is relevant to note that the petitioner had also preferred a review petition under Section 7B of the Act and no additional materials were produced and therefore the review petition was also rejected. Perusal of the records clearly indicated that sufficient opportunity had been given to the petitioner to ventilate his grievance. The authorities have finalised the matter based on relevant materials and therefore it may not be possible for this Court to interfere with the findings recorded by the competent authorities. Under such circumstances, I do not think that the petitioner is entitled for any relief in the writ petition and accordingly the writ petition is liable to be dismissed.

5. Learned counsel for the petitioner submits that sufficient time may be granted to make the payment in instalments.

6. Having regard to the fact that the liability is more than Rs.15 lakhs and the petitioner had already remitted Rs.3 lakhs, as directed by this Court, the petitioner is granted six months time to pay the amount which shall be paid by the petitioner in six equal monthly instalments starting from 1st January 2016. If there is default in payment of any of the instalments, it shall be open for the respondent authorities to take appropriate steps, in accordance with law.

This writ petition is disposed of as above.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr