

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.7429 of 2012

ORDER:

Heard learned counsel for the petitioner and the standing counsel.

The petitioner assails order dated 24.10.2011 passed by the respondent.

The issue arises under The Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act'). The impugned order is issued under Section 14B of the Act. The petitioner assails the impugned order primarily as being violative of principles of natural justice and also proviso to Section 14B of the Act.

The factual submissions in this behalf are that the respondent has proceeded to conduct enquiry under Section 14B of the Act against the Contractor, who was allotted a separate code number and the delayed payments were determined as facts and on such determination without issuing notice or opportunity, the impugned order is passed against the petitioner.

The respondent filed counter affidavit and adverting to the compliance with Section 14B proviso of the Act. The respondent fairly states that no notice is issued to the petitioner, but tries to justify by referring to a few circumstances for passing the order impugned in the writ petition.

Learned counsel appearing for the parties have reiterated the pleadings in their submissions.

Short point for consideration is whether the respondent has followed the requirement of proviso to Section 14B of the Act before passing the order impugned.

"14B. Power to recover damages: Where an employer makes defaults in the payments of any contribution to the Fund (the Family Fund or the Insurance Fund) or in the transfer of accumulations required to be transferred by him under sub-section (2) of Section 15 [for sub-section (5) of Section 17] or in the payment of any charges payable under any other provision of this Act or of (any scheme or Insurance Scheme) or under any of the conditions specified under Section 17, (the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government by

notification in the Official Gazette in this behalf) may recover from the employer such damages, not exceeding the amount of arrear, as it may think fit to impose.

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard."

The respondent has admittedly not issued notice to petitioner at any stage of the enquiry in this behalf. But the petitioner is made liable to pay the alleged damages for delayed contribution of provident fund. In the opinion of this Court, the procedure followed before issuing the order impugned is unsustainable and briefly stated, illegal.

On this short ground, the impugned order is set aside and the matter is remitted to respondent for consideration in accordance with law

It is needless to observe that the respondent issues notices as well as provides adequate opportunity to the petitioner in the proposed enquiry before passing any order.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending in the writ petition shall stand closed.

S.V. BHATT, J

Date: 23.03.2015

KLP ☐