HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.28585 OF 2012

ORDER:

Heard Sri P.Balaji Verma, learned counsel for the petitioner and Sri R.N.Reddy, learned standing counsel for respondents 1 and 2.

M/s Sunayana Security Services Private Limited is the petitioner. The petitioner assails the proceedings dated 15.12.2011, issued on 27.01.2012 (under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act')). Through the impugned proceedings, the 2nd respondent apportioned the PF dues between the petitioner and principal employer/service recipients of petitioner viz., respondent Nos.3 to 12.

Through the impugned proceedings, the 2nd respondent admitted the exemption available to ex-servicemen, who are in receipt of pensionary benefits as admissible under the Government Rules, under Section 16(2) of the Act read with Clause 38 of the DGR Guidelines and recorded the finding that "*though the personnel deployed at the premises of these organisations were 100% ex-servicemen but not all the employees engaged by M/s Sunayana Security Services Private Limited. Hence, the provision of exemption under Section 16(2) is not available to M/s Sunayana Security Services Private Limited and this aspect they should have examined thoroughly while giving the work to the said agency. Hence, in the light of the above, I hold that M/s Sunayana Security Services Private Limited and other Public Sector Undertakings who have engaged the personnel through M/s Sunayana Security Services Private Limited are jointly and severally responsible for implementing provisions of the Act in respect of the employees engaged at their premises irrespective of the fact that they were ex-servicemen because M/s Sunayana Security Services*

Private Limited had never had exemption under Section 16(2) of the Act'.

Sri P.Balaji Varma, learned counsel for the petitioner, *inter alia* contends that the 2nd respondent is not disputing the applicability of Clause 38 of the DGR Guidelines to the ex-servicemen deployed at public sector undertakings/branch offices. As a matter of fact, the personnel deployed by the petitioner at the premises of respondent Nos.3 to 12 are ex-servicemen and so they cannot be included for the purpose of PF contribution. The 2nd respondent records that the ex-servicemen are entitled for exemption. The learned counsel further submits that even if the petitioner is not claiming exemption for the other employees working with the petitioner, the said issue, being independent of the issue, can't have bearing on the contribution of PF for ex-servicemen either by the petitioner or respondent Nos.3 to 12. He further submits that the non-ex-servicemen is an independent issue and firstly no enquiry was taken up and secondly the *ipse dixit* findings cannot be recorded by the 2nd respondent, resulting in determination of PF dues. The learned counsel prays for setting aside the proceedings impugned in the writ petition.

Sri R.N.Reddy, learned Standing Counsel for respondents 1 and 2, submits that, on the showing of the petitioner itself, the petitioner is not an establishment which has complete exemption from the application of the provisions of the Act. Secondly, the petitioner is a covered establishment. The learned counsel admits the position that the procedure applicable in respect of ex-servicemen is different from the procedure applicable to other employees working with the petitioner. The learned counsel submits that on that ground alone, the entire obligation of the petitioner to contribute provident fund for other employees cannot be considered in this writ petition or any decision is rendered by this Court. He prays for dismissal.

I have carefully considered the rival submissions and perused the impugned proceedings dated 15.12.2011.

There are two issues for consideration through the impugned proceedings, one relating to ex-servicemen admittedly deployed by the petitioner for private security services at the premises of respondents 3 to 12. On the finding recorded by the 2^{nd} respondent, this particular category is exempted from PF contribution. The order is inferential on the obligation to contribute PF for ex-servicemen. On the one hand, the 2^{nd} respondent admits 100% deployment of security personnel at the offices of respondent Nos.3 to 12. The exemption from contribution, still by reference to a few non-ex-servicemen employees allegedly working with petitioner, determines PF contribution on all the employees working with petitioner. This reasoning of 2^{nd} respondent is unsustainable and liable to be set aside. The further submission is that exemption is available up to February, 2005 and for the period March, 2005 to May, 2005, the issue for consideration is the primary responsibility of PF contribution either by petitioner or respondents 3 to 12. For this short period, the issue is not independently considered by the 2^{nd} respondent. Therefore, to that extent, the order is vitiated and it is liable to be set aside.

As regards the other aspect viz., that the employees are not ex-servicemen, after perusing the proceedings impugned, I am of the view that a finding is recorded on assumptions and liability is fastened on both the categories of employees. Such a finding, *prima facie,* is violative of principles of natural justice and not supported by material available on record.

For the above reasons, the proceedings impugned are liable to be set aside and are accordingly set aside.

The writ petition is allowed. It is made clear that the statutory obligation of petitioner vis-à-vis other employees is neither considered by this Court nor any view is expressed in this behalf. It is for the 2^{nd} respondent to examine and proceed in accordance with law in determining the PF contribution for ex-servicemen for the period March, 2005 to May, 2005 and other employees working with the petitioner. There shall be no order as to costs.

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

S.V. BHATT, J

10th March, 2015

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