

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP no. 12926 of 2009(O&M)

Date of Decision : 14.12.2015

Avtar Singh

....Petitioner

Versus

Employees Provident Fund Organisation and another

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1)Whether reporters of local newspapers may be allowed to see the judgment?

2) To be referred to the Reporters or not?

3) Whether the judgment should be reported in the Digest?

Present : Mr.A.P.Bhandari, Advocate for the petitioner

Mr. Rajiv Sharma, Advocate for respondents

MAHESH GROVER, J.

The petitioner impugns letter Annexure P-10 dated 27.7.2009 by which the recovery is sought to be effected from him allegedly under the provisions of Section 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The amount stipulated in the recovery notice is Rs.5,90,222/- for the period December, 1984 to April, 1997.

Learned counsel for the petitioner contends that his unit was closed in the year 1984 and from that period onwards, he has deposited a substantial amount with the Provident Fund Authorities which is more than Rs. 17 lakhs, a fact not controverted by the respondents. The petitioner has also shown to this

Court a letter dated 29.6.2000 which is taken on record as mark 'X' indicating that on the said date an amount Rs.4.40 lakhs was to be recovered from the petitioner.

The petitioner then would draw the attention of this Court to Annexures P-5 and P-6 the details of the payments made by him which would also substantiate that from 2000 to 2002 i.e date of issuance of mark 'X' and date of payment in 2002, he had paid an amount of more than Rs. 4 lacs and cumulatively from 1993 onwards he had paid more than Rs.17 lacs. He thus contends that respondents have neither given him the details of the payment due but are insisting on his arrest by virtue of the impugned notice.

The respondents have filed a reply but do not address the concerns of the petitioner and no reasons have been given as to why the respondents remained silent in effecting recovery for a period in question i.e 1984 to 1997. Even this would be a moot question since the unit of the petitioner was shut down in 1984 which fact is also not controverted by the respondents. The respondents in the reply in para 5 have submitted the details of the payments made and insist on an outstanding amount of Rs.5,90,222/- but the aforesaid do not indicate the payments made by the petitioner which have been detailed in Annexures P-5 and P-6 alongwith the particulars of the cheques and the Bank from which they were issued. Specific denial in this regard to the figures given by the petitioner are also not forthcoming.

This petition is pending since 2009 and numerous opportunities have

been given to the respondents. In fact in 2012 when the matter was heard, the Court specifically noticed the fact of the petitioner having made substantial amount towards his liability determined against the late deposit of provident fund dues upto the year 2002. The payment was raised upon the petitioner upto 4.9.1996 amounting to Rs.11,17,179.74 which was not questioned by the petitioner and he deposited the total amount of Rs.17,645,75/- over a period of time upto 2002 duly borne out by Annexures P-5 and P-6.

The respondents did not initiate follow up action thereafter till year 2009 when the impugned notice was issued demanding an amount of Rs.5,90,222/-. The facts would clearly indicate a serious lapse on the part of the respondents. If the petitioner did not deposit the amount till 2002 it was open for the respondents to continue with the demand, if any, at that point of time but not to remain silent for 7 years to raise the dispute by virtue of the impugned order. The reply is totally silent as to why no action has been taken against the petitioner, if he was a defaulter upto year 2009. The public authorities entrusted with the task of effecting recovery on account of any statutory liability cannot be permitted to sleep over the issue without offering any justification for such an inordinate period of 7 years. The reply having been silent and repeated opportunities having yielded no response from the respondents, I am of the considered view that the respondents have resorted to an arbitrary recovery by way of Annexure P-10 which necessarily has to be termed as such for the silence

from 2002 onwards till 2009 and offering no justification to this Court as well for 6 years. Consequently, the petition is accepted, impugned order Annexure P-10 is set aside with a costs of Rs.20,000/-for not responding to the Courts directives and for not providing the necessary instructions. Costs imposed above shall be compensatory to the petitioner.

December 14, 2015
rekha

(MAHESH GROVER)
JUDGE