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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10308 of 2013
Date of decision:06.04.2015

Regional Provident Fund Commissioner ...Petitioner

Versus

M/s Surinder Singh & Company and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajesh Hooda, Advocate,
for the petitioner.

Mr. Deepak Singh, Advocate, and
Mr. Ajay Bhardwaj, Advocate, for the respondents.

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Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 15.10.2012 passed by the Employees Provident Fund Appellate Tribunal, New Delhi (hereinafter referred to as the "Tribunal"), reversing the order passed by the Regional Provident Fund Commissioner (hereinafter referred to as the "Assessing Authority") on 26.08.2011 under Section 7-A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act") and the scheme framed thereunder.

The brief facts of the case are that the establishment of respondent no.1 was inspected by the petitioner on 22.12.1994. Respondent no.1 submitted a list of 20 employees working with it to the petitioner on 22.12.1994 which was duly signed by its partner Pal Singh. On the basis of the requisite information, respondent no.1 was brought under the purview of the Act under Code No.HR/KL-7706/7194 dated 15.02.1995 w.e.f. 22.12.1994. The petitioner issued notices dated 29.06.1995 and 01.10.1996 to respondent no.1 to comply with the provisions of the Act w.e.f. 22.12.1994 onwards and it was reported by the concerned official that respondent no.1 has failed to deposit the EPF, FPF & EDLI contribution and administrative charges thereon for the period from December, 1994 to September, 2000 and hence, a notice was issued on 09.10.2000 to respondent no.1 to appear and represent their case along with record on 30.10.2000 under Section 7-A of the Act.

Pal Singh, partner of respondent no.1-firm, submitted his reply on 27.09.2000 in response to the letter dated 26.08.2000 issued by the Enforcement Officer, Ambala and disputed the applicability of the provisions of the Act on his establishment alleging that there is another establishment, namely, M/s Dhaliwal Service Station, fully owned by Pal Singh and that 4 daily-wager part-time employees have been included in the list dated 22.12.1994 who have no concern with respondent no.1. A partnership deed was also submitted showing that Surinder Singh S/o Bagicha Singh and Pal Singh S/o Surinder Singh (father and son respectively) were running the petrol pump under the name and style of M/s Surinder Singh & Company, Kurukshetra in the ratio of 60:40. The premises of respondent no.1 even had a surprise check of physical verification of his employees on 18.12.2003 and at that time 17 persons were found working on the petrol pump, whereas as per Register No.1 & 2, 25 employees were found on roll in the month of December, 2003 i.e.

18.12.2003 as the establishment was maintaining two separate attendance registers probably one for regular staff and another for part-time/daily-wager staff.

The Competent Authority, exercising the powers under Section 7-A of the Act, passed the order dated 29.01.2004, assessing an amount of ₹3,85,068/- payable by respondent no.1 as P.F. dues, EDLI and administrative charges for the period from December 1994 to September 2000 on the ground that the list of employees submitted by respondent no.1 shows that 20 persons have been employed as on 22.12.194 and at that time nothing was mentioned that some of the workers were the employees of M/s Dhaliwal Service Station. It also took into consideration that in December, 2003, 25 persons were found working with respondent no.1.

Respondent no.1 challenged the order dated 29.01.2004 by way of an appeal before the Tribunal under Section 7-I of the Act. The Tribunal set aside the order dated 29.01.2004 on 31.05.2007 which was challenged by the petitioner by way of CWP No.12324 of 2008, which was decided on 05.03.2009 and the case was remanded back to decide it on the principle of natural justice while providing reasonable opportunity to respondent no.1. The case was then again heard by the Assessing Authority and both the parties were granted full opportunities to produce the documents and examine their witnesses. The Assessing Authority, vide order dated 26.08.2011, decided the applicability of the Act to respondent no.1 and directed it to comply with the provisions of the Act w.e.f. 22.12.1994.

Aggrieved against the said order, respondent no.1 filed the appeal under Section 7-I of the Act which has been allowed on 15.10.2012 on the ground that M/s Surinder Singh and Company and M/s Dhaliwal Service Station are two separate entities and cannot be clubbed for the purpose of considering the number of employees to be more than 20 to apply the provisions of the Act.

Counsel for the petitioner has argued that the Tribunal has erred in reversing the order of the Assessing Authority only on the basis of law without referring to the evidence led by the parties which has been considered in detail by the Assessing Authority. It is submitted that the Tribunal has only observed that there is no finding of fact that both the establishments are inter-dependent on each other and, therefore, it is not clear that there were more than 20 employees even by clubbing both the establishments.

In this regard, counsel for the petitioner has submitted that the Assessing Authority had considered various documentary evidence and positive finding has been recorded, which is as under:-

> "On scrutiny of records submitted by the establishment, it is found that M/s Surinder Singh & Co. is a partnership firm owned by Sh. Surinder Singh S/o Sh. Bagicha Singh and Sh. Pal Singh S/o Sh. Surinder Singh both father and son. Sh. Pal Singh is a working partner. Sh. Pal Singh is a sole proprietor of M/s Dhaliwal Service Station, Kurukshetra. Thus, both establishments are a family affair owned by father and son and Sh. Pal Singh supervises and controls the business of both the establishments.

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Further, the unsecured loan also belongs to their family members and relatives and capital in partnership firm & in a proprietary concern is also of father and son confirming the financial integrality.

The Profit and Loss A/c of M/s Dhaliwal Service Station, Kurukshetra shows that it never paid any water charges and electricity charges. It is also a fact that without water and electricity the business of washing the vehicles and repair is impossible. But being a family business and having geographically proximity, the establishment is using these facilities from their other firm i.e. M/s Surinder Singh & Co., which is paying electricity and water charges as per their Profit & Loss Account. This also shows their oneness and clubbing proposition.

Again it is found that the Profit & Loss Account of both the firms that no rent has been paid by these establishments. This reveals that the business of both the establishments is common and a family affair and have the ingredients of clubbing.

It could not be ignored that the Partner, Sh. Pal Singh, the son had signed the documents duly aware of the facts and filled against Column No.11 of Coverage Proforma that Dhaliwal Service Station, Kurukshetra is a branch of M/s Surinder Singh & Co., Kurukshetra. He

> had contested the applicability of the Act after a gap of 6 years of coverage despite issue of umpteen no. of notices shows that the owners gave a after thought to whole issue albeit baselessly and without any cogent ground just to escape the P.F. liabilities which is meant for illiterate and poor workers who are not even remotely aware of their rights and could not resist the might of owners.
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> The above facts revealed nakedly that both Units are clubbable under the Act and are one for the provisions of Section 2A of the Act and workers of their Units are rightfully entitled for social welfare benefits in the nature of Provident Fund, Pension & Insurance granted under the EPF & MP Act, 1952."

During the course of hearing, learned counsel for respondent no.1 could not deny that M/s Dhaliwal Service Station had failed to show that it had ever paid any water charges and electricity charges rather it was sought to be argued that the service station was being run on a generator and water was drawn from a well.

Surprisingly, these facts were not pleaded before the Assessing Authority and are being argued for the first time to counter the finding recorded by the Assessing Authority that in the absence of any payment having been made towards the water and electricity charges, the service station could not have functioned, therefore, the service station was totally dependent upon the petrol pump i.e. M/s Surinder Singh & Co./respondent no.1 who has been paying the water and electricity charges as per their Profit and Loss account.

On this short ground, this Court is of the considered opinion that the Tribunal has committed a patent error in passing the impugned order as it did not care to look into the facts available on record before reversing the order passed by the Tribunal. Thus, this case is remanded back to the Tribunal to decide the lis again after taking into consideration the finding recorded by the Assessing Authority on facts, instead of deciding the lis between the parties solely on the point of law, which has to be applied to the facts of the case.

Accordingly, the present writ petition is allowed; the impugned order passed by the Tribunal is quashed and the matter is remanded back to the Tribunal to decide the matter afresh after taking into consideration the findings of fact recorded by the Assessing Authority while concluding that respondent no.1 is liable to pay the dues under the Act.

The parties are directed to appear before the Tribunal on 13.07.2015.

The Registry is directed to inform both the counsel for the parties in this regard.

April 06, 2015 **(Rakesh Kumar Jain)**
vinod* **Judge**