

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21306 of 2015

Date of Decision: 06.10.2015

Employees Provident Fund Organization
and another

... Petitioners

Versus

The Punjab State Cooperative Supply
& Marketing Federation Ltd.
and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjay Tangri, Advocate,
for the petitioners.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

Having regard to the order passed by the authority under section 7-A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 ("1952 Act") which runs into 17 pages containing reasons for the decision taken and findings returned on the issues involved and the dissatisfactory work done by the Appellate Tribunal in Appeal ATA No: 385(11) 2013 in a cryptic two page order where the sum total of the operative part shows complete disregard of what is expected in appellate work which needless to say is full-fledged re-examination of the facts and law determined by the Commissioner which is contained para.4 of the impugned order which deserves to be reproduced:-

*"4. As a result of these considerations, the order passed
by the Assistant PF Commissioner is totally wrong, illegal*

and bad in law. The order is not the speaking order. The commissioner has not applied his mind while assessing the EPF dues as it is not based on any wages and other record. The commissioner has not only to apply his mind to the requirements of section 7-A but he is cast with the duty of making a speaking order after confirming to the rules of natural justice. The order need not to be a very elaborate order as an order of a court but it must contain reason in support of the order. The order must disclose that there has been an application of mind the authority to which the matters in controversy and to the contentions raised by the person whom the order is passed under the section. If these requirements are not satisfied the order passed would be void in law.”

This Court is startled at the reasoning recorded by the Presiding Officer, Employee's Provident Fund Appellate Tribunal, New Delhi and harbours hardly any doubt that the work is shameless and this Court is sorry to say that it is dangerous for Tribunals to be manned by persons who appear to understand nothing of how jurisdiction is to be exercised. When one reads what precedes the opening words in para. 4; *“As a result of these considerations”* you find nothing at all which may even remotely qualify as consideration, or reasoning or a finding on any of the issues. It seems rather apparent that the appellate authority has got rid of the appeal as soon as possible. It would be a compliment to say that the order is non-speaking, cryptic and absurd. No reasonably prudent person can judge what has weighed in the mind of the appellate authority leave alone this Court in judicial review under Article 226 and 227 of the Constitution of India judicially scrutinizing the impugned order to test its correctness. The order is so inherently defective in its making and at sea that it deserves to be quashed at first sight without notice to the respondent establishment, who if

heard could do no better than concede remand. I have no hesitation in holding that the matter has to be remitted to the Tribunal for re-consideration of the case on the merits in appeal against the order passed by the assessing authority to avert a serious miscarriage of justice. To say the least the appellate order when read in the context of the grounds taken in appeal by the EPF Organization verges on judicial misbehaviour.

I have passed the order without issuing notice to the Punjab State Cooperative Supply & Marketing Federation Ltd. because it would be a sheer waste of time of this Court to hear them on an empty formality to come to the same conclusion. Nonetheless the 1st respondent would not be prejudiced by this order as it expresses no opinion on the merits of the case. The issues involved remain at large as though the appellate order was not passed at all.

Accordingly, the petition is allowed in limine. The impugned order is set aside. The case is remanded to the appellate authority at New Delhi for passing a fresh order in accordance with law after hearing both the parties.

Parties to appear at a date to be fixed by the Tribunal after issuing summons to them to appear in the remand proceedings.

A copy of this order be sent to the respondents and to the Secretary, Government of India in the Ministry of Labour, New Delhi for record and information.

(RAJIV NARAIN RAINA)
JUDGE

06.10.2015
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