

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3807 of 2013
Date of Decision: 15.01.2015

Regional Provident Fund Commissioner

..... Petitioner

Versus

Faridabad Thermal Power Station
and another

..... Respondents

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

Present: Mr. Sandeep Goyal, Advocate,
for the petitioner.

Mr. Pardeep Singh Poonia, Advocate,
for respondent No.1.

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

RAJIV NARAIN RAINA, J.(Oral)

This petition has been filed under Article 226 of the Constitution of India questioning the correctness of the order passed by the Presiding Officer, Employees' Provident Fund Appellate Tribunal, New Delhi (for short 'EPFAT') setting aside the order of the Regional Provident Fund Commissioner directing the appellant M/s Haryana Power Corporation Ltd setting aside the order passed by the Assistant Provident Fund Commissioner, Faridabad, for short 'APFC'.

The identity of the contractors who are said to have carried out the civil works in the respondent-Corporation is not in dispute. The question is as to the identity of those who worked through the contractors discharging duties of cleaning, security and dismantling of building works etc. and as to

the liability of the principal employer-corporation to deposit contributions in the first instance and then to recover from the contractors the amounts deposited towards PF contributions.

Having read the order of the Regional Provident Fund Commissioner exercising power under Section 7A of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 and the order passed by the Employees' Provident Fund Appellate Tribunal, New Delhi, there is left a large non-adjudicated margin for a fair and proper determination on the issue of liability which has not been resolved by the appellate tribunal when it should have remitted the case for returning proper findings of fact as to the liability of the respondent corporation.

Mr. Goyal appearing for the provident fund organization has referred to the order of the Commissioner dated May 31, 2006 contained in paragraphs 3, 4 at page 28 and and para. 5 at page 32 of the writ papers where a list of contractors is incorporated in chart with the amounts due and payable against the name of each contractor. The total amount is Rs.18,90,228/- for the assessment year 1995-96 to 1998-99. It is noted that this order was passed on remand directions issued by the EPFAT, New Delhi in ATA 13(16) 2005 where a specific direction was issued to examine the contractors and to identify the employees. It is recorded in the order of the Court *a quo* that the respondent Corporation furnished the list of contractors engaged by them and requested to summon the contractors but the PF authority under section 7 A of the Act has not summoned or examined the contractors. The appellate authority has reasoned that the directions issued by it were not complied with and the fresh order was

passed without due application of mind, though these words have not been used, but that is what the authority actually means. If the remand directions were not obeyed then it was not proper for the appellate authority to have jumped to a conclusion and set aside the basic order but instead should have remanded the case again for a fresh determination on facts of which there is no clarity even in the writ papers placed before this Court.

Therefore, in the circumstances and in the absence of any clarity on facts sufficient to pass a final order on merits and for want of probative evidence in support of those facts with respect to employment of workers under the civil contractors mentioned in the chart in para.5 then it would serve the ends of justice if the appellate order is set aside and the matter perforce and without much open left to this Court except to make an order of remand to the APFC to re-examine the matter threadbare by permitting both the parties to lead any further evidence in support of their respective cases and then pass a reasoned order and in doing so, the APFC Faridabad would not be influenced by anything said in this order which is not an expression of opinion on the merits of the case.

The respondent Corporation would submit a list of contractors afresh within one month of appearance of the parties before the APFC, Faridabad together with the names of the persons employed by them during the relevant period so that an adjudication can take place which is fair and proper. However, it is directed that the proceedings will not be held up needlessly, in case the workers whose names are on the list of contractors are not traceable or their whereabouts known after reasonable efforts have been made by the APFC, Faridabad to serve them by the modes prescribed

by law and in this, a direction is issued to the various Superintendents of Police/SPs of the district where they may be currently living to assist the APFC, Faridabad to locate those persons by treating this order either as a direction within the limits of the jurisdiction of this Court and as a request to the police authorities in other jurisdictions only with a view to secure them the monetary benefits that may be due to them from the respondent or the contractors.

The petition stands allowed. The impugned order is set aside. The petition is disposed of with the above remand order.

Parties are directed to appear before the APFC, Faridabad on 16.02.2015.

It will be the endeavour of the APFC, Faridabad to decide the case as expeditiously as possible, but expeditious disposal of the remand proceedings should not be at the cost of justice.

(RAJIV NARAIN RAINA)
JUDGE

15.01.2015
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