IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20399 of 2011

==

The Central Board of Trustees through the Assistant Provident Fund Commissioner, Patna in the Office of the Regional Provident Fund Commissioner, Bhavishya Nidhi Bhawan, R-Block, Road No:-6, Patna, Bihar.

.... Petitioner/s

Versus

District Rural Development Agency, Nalanda (Biharsharif) Vikas Bhawan, Nalanda Collectorate Town, Biharsharf, District-Nalanda through its Chief Executive Officer -cum- Deputy Development Commissioner, Nalanda.

.... Respondent/s

With

==

Civil Writ Jurisdiction Case No. 20388 of 2011

==

The Central Board of Trustees through the Assitant Provident Fund Commissioner, Patna in the office of the Regional Provident Fund Commissioner, Bhavishya Nidhi Bhawan, R-Block, Road No:-6, Patna, Bihar.

.... Petitioner/s

Versus

District Rural Development Agency, Nawada Vikas Bhawan, Nawada Collectorate Town, Nawada, District-Nawada through its Chief Executive Officer -cum- Deputy Development Commissioner, Nawada, Ramji Singh.

.... Respondent/s

==

Appearance :

(In CWJC No.20399 of 2011)

For the Petitioner/s : Mr. Ram Shankar Pradhan, Sr. Adv. with
Mr. Jainendra Kumar, Advocate

For the Respondent/s : Mr. Nikesh Kumar, Advocate

(In CWJC No.20388 of 2011)

For the Petitioner/s : Mr. Ram Shankar Pradhan, Sr. Adv. with
Mr. Jainendra Kumar, Advocate

For the Respondent/s : Mr. Nikesh Kumar, Advocate

==

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-08-2016

Re: <u>I.A. No.3832 of 2016 in CWJC No.20399 of 2011</u>:
With
<u>I.A. No.3831 of 2016 in CWJC No.20388 of 2011</u>:

These two interlocutory applications have been filed seeking permission to appropriately modify the memo of parties of the petitioner in the following manner:

> "The Central Board of Trustees through Assistant Provident Fund Commissioner, Patna in the Office of the Regional Provident Fund Commissioner, Bhavishya Nidhi Bhawan, R. Block, Road no.6, Patna."

Mr. Ram Shankar Pradhan, learned senior counsel, appearing for the petitioner has with reference to a notification dated 16.09.2014 enclosed with the respective interlocutory applications submitted that it is on principle decided, that the body representing the Provident Fund Organization would be the Central Board of Trustees, Employees Provident Fund, considering the quasi judicial nature of the proceedings and the orders impugned and the respective Regional Provident Fund Commissioner, the Assistant Provident Fund Commissioner and the Law Officer concerned has been duly authorised to represent the Central Board of Trustees.

Mr. Pradhan, learned senior counsel in view of the notification dated 16.9.2014 enclosed with the interlocutory applications prays to appropriately amend the memo of parties in the two writ petitions to allow the Assistant Provident Fund Commissioner to represent the Central Board of Trustees.

I have heard learned counsel for the parties and considering the technicality in the prayer made in these interlocutory application(s) the same is allowed. Learned counsel is permitted to appropriately amend the memo of parties in the two writ petitions during the course of the day.

The interlocutory applications are allowed.

Re: **CWJC No.20399 of 2011**:
With
CWJC No.20388 of 2011:

Since the two writ petitions raise common issue of facts and law hence they have been heard together and with the consent of the parties, are being disposed of by this common judgment.

While the petitioner in the two writ petitions are common and are represented by Mr. R.S. Pradhan, learned senior counsel assisted by Mr. Jainendra Kumar, the respondents in the two writ petitions are the District Rural Development Agency, Nalanda at Biharsharif and District Rural Development Agency, Nawada (hereinafter referred to as the 'DRDA') respectively and who are represented by Mr. Nikesh Kumar.

The petitioner in CWJC No.20399 of 2011 is aggrieved by the order dated 17.8.2011 passed by the Employees Provident Fund Appellate Tribunal, New Delhi (hereinafter referred to as the 'Appellate Tribunal') in A.T.A. No.58(3) of 2011, whereby the appeal preferred by the sole respondent has been allowed and it is held that the respondent-establishment is not notified under section 1(4) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') and the 'Scheme' framed thereunder. The 'Appellate Tribunal' has further held that the establishment is also exempted under section 16(1) (b) of 'the Act'. Identical order is passed by the 'Appellate Tribunal' in the second writ petition i.e. CWJC No.20388 of 2011 which is dated 17.8.2011 passed in A.T.A. No.56(3) of 2011. The petitioner-Organization being aggrieved is before this Court.

While exhaustive arguments have been advanced by Mr. Pradhan as to the beneficial nature of legislation in question to contest the orders impugned in the two writ petitions and to canvass that a number of 'DRDAs' in the State, have willingly accepted the applicability of 'the Act', the orders impugned have also been questioned on grounds that the appeals filed by the respective 'DRDA' are barred by limitation as provided under rule 7 of the Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 (hereinafter referred to as the 'Procedure Rules'). On the other hand Mr. Nikesh Kumar appearing for the sole respondent in each case while explaining the delay has questioned the writ petitions on their merits as according to him, in view of the opinion expressed by this Court in relation to another District Rural Development Agency, Aurangabad in a case arising from CWJC No.6178 of 2011, the petitioner- Organization has no jurisdiction to thrust the applicability of 'the Act' on these respondents.

Responding to the objection raised by Mr. Nikesh Kumar, Mr. Pradhan has taken this Court to the very judgment relied upon by Mr. Nikesh Kumar rendered in CWJC No.6178 of 2011(**District Rural Development Agency, Aurangabad vs. The Employees Provident Fund Organizagion**), a copy of which has been placed on record vide Annexure-C to the Counter affidavit of the respondent 'DRDA', Nalanda to submit that the matter was remitted to the Provident Fund authorities to pass a fresh order and whereafter assessment orders were passed in the respective cases. He submits that the assessment order was also passed in the case of 'DRDA', Nalanda and 'DRDA', Nawada which was questioned by them in CWJC No.7462 of 2008 and CWJC No.3005 of 2008 respectively but a Bench of this Court did not choose to interfere with the assessment order rather permitted the two 'DRDAs' to take recourse to the remedy of appeal. He submits that no objection of any kind was raised by the 'DRDAs' as regarding the issue of jurisdiction at that stage. He submits that it is at the stage of appeal that an issue of jurisdiction was raised and when the 'Appellate Tribunal' has upheld the objection to hold that in absence of a notification under section 1(4) of 'the Act' it could not be applied on the 'DRDAs' and secondly in view of the stand taken by the respective 'DRDAs' that they are maintaining provident fund scheme in the respective organization, the 'Appellate Tribunal' held them exempted under section 16(1) (b) of 'the Act'. It is thus the argument of Mr. Pradhan that whereas in the case of 'DRDA', Nalanda the assessment order was passed on 6.2.2008, in so far as the 'DRDA', Nawada is concerned it was passed on 31.5.2006 but the appeals were filed only in the year 2011 which were beyond the period of limitation provided under rule 7 of 'the Procedure Rules'. He thus submits that no application to condone the delay was filed by the respondent 'DRDAs' and in any event on expiry of 120 days, any further delay could not even be condoned by the 'Appellate Tribunal'.

Mr. Pradhan thus questions the appellate orders on the following grounds:

(a) The appeal was hopelessly barred by limitation. Learned counsel in support has relied upon a Bench decision of this Court passed in CWJC No.20579 of 2014 (Central Board of Trustees Vs. M/s S.K. Nasiruddin Biri Merchant Pvt. Ltd.) dated 10.9.2015; and

(b) The petitioner having surrendered to the jurisdiction of the Assessing Authority and having not raised any issue of jurisdiction at any stage of the proceedings, no issue of jurisdiction could have been raised at the appellate stage.

Mr. Nikesh, learned counsel appearing on behalf of the DRDAs has relied upon an order of this Court passed in the case of

District Rural Development Agency, Aurangabad (supra) to submit that the District Rural Agency at Nalanda and Nawada along with others were put to coverage of 'the Act' vide order dated 13.5.1991 of the Regional Provident Fund Commissioner pending notification of the Government of India in the official gazette. By the said order, Code Numbers were also allotted to 40 'DRDAs'. Learned counsel referred to the provisions of section 1(4) of 'the Act' to submit that the mandate of law requires a two-fold exercise for bringing any establishment under this enactment, namely:

(a) There should a voluntary request by an employer and a majority of employees for coverage; and

(b) The coverage is to be notified by the Central Provident Fund Commissioner in the official gazette.

He refers to the judgment of this Court passed in CWJC No.6178 of 2011 **(District Rural Development Agency vs. The Employees Provident Fund Organization)** to submit that this very issue came up for consideration in relation to 'DRDA', Aurangabad and a Bench of this Court taking note of the statutory provisions, quashed the order dated 13.5.1991 whereby 40 'DRDAs' in the State had been brought under coverage, vide order passed on 17.5.2011 and which judgment of this Court has not been set aside by any superior Court nor any fresh notification was issued by the Central Provident Fund Commissioner under section

1(4) of 'the Act'. As regarding the exemption upheld by the 'Appellate Tribunal' it is stated that since the two 'DRDAs' do have a provident fund scheme in the organization hence the 'Appellate Tribunal' taking note of this aspect of the matter approved their exemption under section 16(1) (b) of 'the Act' which suffers from no infirmity.

As regarding the limitation, learned counsel while admitting to the position that no limitation petition was filed, has submitted that since the petitioner in absence of jurisdiction and in absence of coverage do not have jurisdiction to pass assessment orders they are *void ab-initio* and would not invite a limitation.

I have heard learned counsel for the parties and I have perused the records.

The facts are common in the two writ petitions and hence I need not discuss the individual details. It is not in dispute that the issue of jurisdiction was not raised by the petitioner-organization until before the 'Appellate Tribunal'. The issue would be whether an objection of jurisdiction not having been raised at the initial stage, can be permitted to be raised at the appellate stage. The second issue raised is whether the appeal was hopelessly barred by limitation requiring any indulgence.

I would first take up the issue of limitation for if the appeal itself was not maintainable it could not have been adjudicated on merits. The memo of appeal has been produced by Mr. Pradhan in the two cases and which shows that the respondent while questioning the assessment order has also raised the issue of the coverage order dated 13.5.1991 as well as the attachment order issued by the petitioner-organization to the State Bank of India in the two cases. The issue of limitation to question the validity of the assessment orders and the attachment orders would only arise, if the petitioner-organization possessed jurisdiction to pass such orders. Law is settled and a void act cannot assume legality by passage of time. In so far as the case in hand is concerned, it is an undisputed position that the coverage order dated 13.5.1991 placed at Annexure 'C' to the counter affidavit of the respondent 'DRDA' in each of the two writ petitions, was quashed by this Court in the case arising from CWJC No.6178 of 2011. It is again undisputed that no fresh notification has been issued in tune with section 1(4) of 'the Act'. In such uncontested position where the very notification which brought the 'DRDAs' within the coverage of 'the Act' dated 13.5.1991 stands quashed and which order of this Court has not been questioned before a superior forum nor any fresh notification of coverage is issued under section 1(4) of 'the Act' it is binding on the organization. This is an uncontested position. In such circumstances, the explanation given by Mr. Pradhan to justify the assessment order(s) in question by relying upon the liberty granted by this Court in the order passed in CWJC No.6178 of 2011 would not bail the petitioner out for in view of the order passed by this Court in CWJC No.6178 of 2011 dated 17.5.2011 quashing the very coverage notification dated 13.5.1991, the assessment orders passed in the case of the two 'DRDAs' dated 6.2.2008 and 31.5.2006 was rendered illegal.

The argument of Mr. Pradhan that even when the petitioner chose to question the assessment orders before Court through separate writ petition and was relegated to the remedy of appeal, he never questioned this action, would not in any manner confer jurisdiction on the provident fund organization, because the foundation for such exercise itself stood removed by the order passed in CWJC No.6178 of 2011. The reason may be whatsoever, but the fact remains that once the coverage notification dated 13.5.1991 was quashed on grounds of its invalidity, the assessment order(s) passed prior thereto in the case of the petitioner was rendered illegal and non-est. In such view of the matter the order of the 'Appellate Tribunal' in upholding the legal position while testing the assessment order(s), is only a completion of formality.

As I have observed, in absence of any fresh notification under section 1(4) of 'the Act', the Provident Fund Organization who are the writ petitioners before this Court have no jurisdiction to enforce the provisions of 'the Act' on the respondent 'DRDAs' and even the plea that some of the 'DRDAs' have accepted its applicability, can be no reason to enforce the provisions of 'the Act' on the respondent 'DRDAs' who have chosen to question the applicability of 'the Act'. For the same reasons, the petitioner also cannot question the order impugned on limitation for no limitation arises to question a void Act or an exercise without jurisdiction. Once it is held that the Provident Fund Organization had no jurisdiction to enforce the provisions of 'the Act' on the respondent 'DRDAs', its challenge cannot be obstructed on the technicalities of limitation.

For the reasons and discussion above, I find no infirmity with the order passed by the 'Appellate Tribunal' impugned in the two writ petitions which are dismissed accordingly.

As a consequence of this order any money recovered from the two 'DRDAs' should be refunded by the writ petitioners within a maximum period of three months from the date of receipt/production of a copy of this order.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15-09-2016
Transmission Date	NA