

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.53 of 2011**

**IN**

**Civil Writ Jurisdiction Case No. 12826 of 2010**

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R.P.S.Residential Public School, New Bailey Road, Patna through its  
Secretary Sri Sakaldeo Singh

.... .... Appellant

Versus

1. The Regional Provident Fund Commissioner, Bihar at Patna.
2. The Assistant Provident Fund Commissioner, Bihar at Patna.
3. Sri Bimal Kishore Jha, S/O Sri Sahdeo Jha, resident of Flat No. 202,  
Deoki Nandan Apartment, Magistrate Colony, P.O. Ashyana Nagar,  
P.S. Rajiv Nagar, Patna – 800 015.
4. The Union of India through its Secretary, Ministry of Labour &  
Employment, New Delhi.

.... .... Respondents

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**Appearance :**

For the Appellants : Mr. Dhanendra Chaubey, Advocate  
For the Respondent nos. 1 & 2 : Mr. J.P. Verma, Advocate

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**

**And**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)**

**Date: 19-08-2016**

This Intra-Court Letters Patent Appeal has been  
filed against the order of the learned Single Judge dated  
09.11.2010, dismissing the writ petition being C.W.J.C. No.  
12826/2010 (R.P.S. Residential Public School Vs. Regional  
Provident Fund Commissioner, Bihar, Patna and others).

We have heard learned counsel for the  
appellant and learned counsel for the Provident Fund  
Commissioner. In spite of valid service of notice respondent

no. 3, who is private contesting respondent, has chosen not to appear.

By the writ petition, the writ petitioner/appellant had challenged the order dated 26.02.2007, as passed by the Assistant Provident Fund Commissioner, as was affirmed by the Appellate Tribunal, in A.T.A. No. 420(3)2007 dated 25.05.2010.

The dispute is with regard to the liability of Provident Fund payable to respondent no. 3, Sri Bimal Kishore Jha. The facts are as follows:-

The writ petitioner/appellant is a School and covered by the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act" for the sake of brevity) and the respondent no. 3 was a teacher employed in the said School. He allegedly was appointed on 01.12.1999, but his Provident Fund deductions allegedly were made from April 2002 when he was issued the account number. His services were terminated by the said School in January 2005. He, thereafter, on 22.08.2005, withdrew his Provident Fund deposited with the Regional Provident Funds Commissioner, as deposited by the School for the period March 2002 to





January 2005. Thereafter, it appears from the records of the Provident Funds Commissioner, as called by us, on or about 21.12.2005, and then on 08.05.2006, respondent no. 3 wrote to the Regional Provident Funds Commissioner stating that for the period 01.12.1999 to 12.01.12005, he was in service of the School, but when he withdrew his Provident Fund amount it reflected that Provident Fund was deposited only from April 2002. He was, thus entitled to Provident Fund for the earlier period as well. In support of his claim, he had annexed his appointment letter, joining letter and no other documents. The appointment letter and joining letter was dated 01.12.1999.

It appears that on the basis of this, a notice was issued by the Provident Fund Authorities to the School in question and a proceeding under Section 7A of the Act for assessment was initiated.

The defence of the School aforesaid was that though respondent no. 3 was issued the appointment letter, he was not allowed to join, because his original documents could not be verified. He joined only in March 2002, whereafter salary payment was made, Provident Fund deducted and deposited. The Provident Fund authorities then



assessed the Provident Funds dues for the period December 1999 to February 2002 assuming wages paid to him at a particular rate and calculated about Rs. 19,000/- and odd as the Provident Funds employers contribution and directed the writ petitioner/appellant School to deposit the same or pay the same to respondent no. 3. Aggrieved by this, an appeal was preferred to the Tribunal, which rejected the same. The learned Single Judge also did not interfere.

Before us, on behalf of the writ petitioner/respondent, it is submitted that when respondent no. 3 claimed certain deductions that were made from his salary paid, and the department accepted that, even though contradicted by the School that no such payment of salary was made, it was incumbent upon respondent no. 3 to show as to how salary was paid to him, what was the quantum thereof and when it was paid. Equally, the department, while creating liability on the writ petitioner/appellant, was required to bring on record actual payment of salary to respondent no. 3 during the period in dispute. There were no documents produced either by respondent no. 3 or by the department to show that remuneration was paid to respondent no. 3 during the period 1999 to 2002 and if paid

there were deductions on account of Provident Funds which was not deposited with the department. This is the primary liability and onus to be discharged by the claimant and the Provident Fund authorities to determine and fasten the liability.

On the other hand, learned counsel for the department submits that the writ petitioner/appellant did not produce any paper or document to show that salary was not paid to respondent no. 3. Learned counsel for the department further submits that the letter of joining issued itself assumes or presumes payment of wages. Unfortunately, learned counsel did not appreciate that whether payment was made or not made, was itself a question in dispute. Respondent no. 3 was obliged to bring on record the pay slips and other materials to show that, in fact, he had received payments which payments showed Provident Fund deductions. In spite of protracted proceedings, not a single chit of paper in support thereof was produced. Rather, on the record, we find that the returns, as filed by the School, which shows payment to others and deductions of Provident Fund and deposit thereof in relation to others, but respondent no. 3 does not figure in those relevant period. Thus, in absence of proof of



payment of wages, on conjecture and surmises, that as appointment letter had been issued payment of wages would be assumed, cannot form the basis of any assessment. Even, respondent no. 3, who was claiming, could not produce any direct evidence of payment of wages to him.

In this connection, we may refer to the judgment of the Apex Court in the case of **Food Corporation of India Vs. Provident Fund Commissioner and others** since reported in (1990) 1 Supreme Court Cases 68 and this is what their Lordships held in paragraph-9 of the judgment which reads as such:

*“9. ....This power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. ....”*

We may only add that Provident Fund Commissioner is not an authority under the Payment of Wages Act, to determine, whether wages should be paid or not. A party claiming the same has to prove it and the

department which exercises quasi judicial functions under Section 7A of the Act to make assessment has to work on cogent materials. In absence of proof of payment of wages to respondent no. 3, the assumed deductions and liability of the employer to pay the Provident Fund, when it is seriously disputed by the employer, cannot arise.

In that view of the matter, we have no option but to allow this appeal. The order of the learned Single Judge and orders as impugned before it are consequently set aside.

The records of the Provident Fund Commissioner are being returned.

**(Navaniti Prasad Singh, J.)**

**(Nilu Agrawal, J.)**

Rajeev/A.F.R.

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