IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16856 of 2013 (O&M)
Date of Decision:- 25.10.2016.

Assistant Provident Fund Commissioner, Chandigarh
......Petitioner

Versus

Employee Provident Fund Appellate Tribunal and another
......Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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Present: Ms. Geeta Sharma, Advocate for the petitioner.

Mr. A.K. Chandok, Advocate for respondent No.2.

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P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner-Assistant Provident Fund Commissioner has questioned the validity of the order dated 20.9.2012 passed by the Employees Provident Appellate Tribunal, New Delhi.

2.) The second respondent – M/s Harry Hyper Store were allotted PF Code on 28.8.2009 based on the application made by the second respondent while enclosing list of employees vide Annexure P-4 wherein 15 plus 10 employees have been shown.

3.) Learned counsel for the second respondent submitted that a sum of ₹ 45,804/- was deposited for 15 employees. The EPF Department inspected the premises of the second respondent and found that there were 25 employees. Consequently, Section 7-A proceedings were drawn by giving ample opportunity to the second respondent and determined the arrears of provident fund to be deposited by the second respondent to the tune of ₹ 3,98,446/- as on 31.1.2011 vide Annexure P-1. The second respondent feeling aggrieved by the 7-A proceedings dated 7.2.2011 preferred an appeal before the Employees Provident Appellate Tribunal. On 20.9.2012, the Employees Provident Appellate Tribunal allowed the second respondent's appeal based on the affidavits of the employees of the second respondent.

4.) Learned counsel for the petitioner submitted that at the time of issuance of Provident Fund Code on 28.8.2009, the second respondent has furnished list of names of 15 plus 10 persons. Therefore, it is evident that 25 employees were working in the second respondent-Store. Therefore, there is no infirmity in the 7-A proceedings dated 7.2.2011. Thus, the Employees Provident Appellate Tribunal erred in interfering with the order dated 7.2.2011. Hence, the Employees Provident Appellate Tribunal order dated 7.2.2011 be set aside.

5.) Per contra, learned counsel for the second respondent submitted that no doubt 25 employees are working in the second respondent-Store whereas among them 10 employees are working from different branded companies for which provident fund on behalf of the employees were remitted by the respective companies. Therefore, the second respondent is not liable to pay provident fund on behalf of the 10 employees who are working on behalf of the branded companies. This issue has not been considered while drawing 7-A proceedings by the EPF Department. Therefore, the matter is to be remanded to the Assistant Provident Fund Commissioner to draw fresh proceedings under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

6.) Heard learned counsel for the parties.

7.) The second respondent's dispute is relating to engagement of 25 employees. Perusal of Annexure P-4, it is evident that there are 15 plus 10 employees. If the 10 employees are employed by other than the second respondent, then the second respondent has to lead evidence in Section 7-A proceedings so as to demonstrate that insofar as 10 employees are concerned, the provident fund is being paid by respective branded company and the second respondent is not liable to pay PF for those 10 employees. Therefore, there is a dispute relating to engagement of 15 employees or 25 employees. Hence, the Employees Provident Appellate Tribunal's order as well as 7-A proceedings dated 7.2.2011 are set aside. The Assistant Provident Fund Commissioner, Chandigarh is directed to decide 7-A proceedings afresh by giving opportunity to the second respondent. Such proceedings shall be completed within a period of four months from today. In the meanwhile, the second respondent is directed to remit ₹ 3,98,446/- in the EPF Department subject to outcome of Section 7-A proceedings afresh. If the 7-A proceedings is once again decided and determined that the second respondent is liable to pay ₹ 3,98,446/-, then the EPF Department is at liberty to pass further order relating to claiming interest as well as damages under the statutory provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 after due notice to second respondent. The second respondent is liable to pay interest and damages as per the demand made by the EPF Department.

8.) Accordingly, petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

October 25, 2016.
sandeep sethi

Whether speaking/reasoned:- Yes / No
Whether Reportable:- Yes / No.