

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(232)

CWP No. 18620 of 2013 (O&M)
Date of Decision:- 03.10.2016.

M/s Pots and Plants And Another

.....Petitioner(s)

Versus

Regional Provident Fund Commissioner and Another

.....Respondent(s)

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

Present: Mr. Barijender Kaushik, Advocate
for the petitioners.

Mr. Ajay Singla, Advocate
for the respondents No. 1 and 2.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of the order dated 31.12.2010 and 21.04.2011 vide Annexures P-8 and P-9 respectively. On 31.12.2010, the respondent-Assistant Provident Fund Commissioner proceeded to pass an order under Section 7-A of the Employees' Provident Funds & Miscellaneous Provision Act, 1952 (for short the 'EPF' Act). It was an ex-parte order. The petitioner was directed to deposit the balance of amount of ₹ 6,31,421/- within a period of 15 days of receipt of the order. The petitioner aggrieved by the order passed under Section 7-A of the EPF Act dated 31.12.2010, preferred a review application before the

Assistant Provident Fund Commissioner under Section 7-B of the EPF Act. Review application was disposed of, while affirming the proceedings under Section 7-A of the EPF Act on 21.04.2011. Thus, the petitioners are before this Court questioning the validity of the order passed under Section 7-A and 7-B of the EPF Act.

Learned counsel for the petitioner vehemently contended that the petitioner has not been given opportunity to adduce evidence in the Section 7-A of the EPF proceedings. It is evident from the order dated 31.12.2010, none appeared on behalf of the department. Thus the Assistant Provident Fund Commissioner proceeded to pass orders under Section 7-A of the Employees' Provident Funds Act ex-parte. The review application was not entertained since no new material were placed on record to show that it is a matter for review. Since petitioner was not heard in the main matter case be remanded for fresh consideration.

Per contra, learned counsel for the respondents submitted that despite giving sufficient opportunity to the establishment, petitioners have not come forward before the Assistant Provident Fund Commissioner in the Section 7-A proceedings. Therefore, there is no lacuna in the order passed under Section 7-A of the EPF Act dated 31.12.2010. Further petitioners have not made out case to review the order in their review application so as to seek review the 7-A proceedings. It was further contended that the petitioner should have resorted to remedy of appeal before the Appellate Court under Section 7 (i). On the other hand, he has resorted to filing review application under

Section 7-B of the EPF Act. Even, after disposal of the review application, he had remedy of appeal before the Appellate Court. The same has not been exhausted. Therefore, writ petition itself is not maintainable.

Heard, learned counsel for both the parties.

Perusal of the order passed under Section 7-A, the petitioner has not been heard. Therefore, matter requires to be remanded to the Assistant Provident Fund Commissioner/Quasi Judicial Authority under Section 7-A of the EPF Act to decide proceedings afresh after giving due opportunity to the petitioner. Thus order dated 31.12.2010 and 21.04.2011 (Annexure P-8 and P-9) are set aside.

(i) The petitioners are directed to deposit a sum of ₹ 6,31,421/- in the EPF Department within a period of two months from today.

(ii) The petitioners or authorized representative is directed to appear before the Assistant Provident Fund Commissioner/Quasi Judicial Authority in the 2nd week of November, 2016 and request for fixing date of hearing. Then, the Assistant Provident Fund Commissioner is directed to fix date of hearing to proceed under Section 7-A of the EPF Act and complete proceedings by last week of January, 2017.

(iii) In the 7-A proceedings if the determination is against the petitioners then they are liable to pay the determined amount. For such amount the respondents are liable to levy interest and damages

in accordance with statutory provisions on the petitioners for the intervening period from January 2011 to December, 2016.

Accordingly, petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

October 3, 2016

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