IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 7256 of 2012 (O&M)
Date of decision : 3.6.2016
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Regional Provident Fund Commissioner, Faridabad
................Petitioner

vs.

Arya Vidya Mandir Senior Secondary School,
Ballabgarh through its Manager
.................Respondent

Coram: Hon'ble Mr. Justice P.B. Bajanthri

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

Mr. Adarsh Jain, Advocate for the respondent.
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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

P.B. Bajanthri, J.

The petitioner - Regional Provident Fund Commissioner, Faridabad (for short 'department') has assailed the order dated 26.4.2011 (Annexure P-4) passed in ATA No. 728 (16) 2007 by the Employees' Provident Fund Appellate Tribunal, New Delhi (for short 'the Tribunal').

2) Respondent – Arya Vidya Mandir Senior Secondary School, Ballabgarh (for short 'institution') - an educational institution engaged services of both teaching and non-teaching staff. One retired

teaching staff, namely, Surjeet Singh – Political Science teacher joined the institution on 6.7.1992. He was given Provident Fund Account No. HR 6251/65, since the institution is covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act'). He had given complaint to the petitioner-department that the respondent institution have manipulated wages of the employees in the institution so as to contribute provident fund lesser than the required contribution of provident fund in accordance with law. The institution is stated to be recognized by the State of Haryana. Thus various norms adopted by the State Government was required to be adhered by the institution like wages etc.

(3) The department after receipt of the representation/complaint of former employee Surjeet Singh of the respondent-institution commenced investigation like approaching District Education Officer by a team of Enforcement Officers of the department to find out recognized institutions have to follow the minimum wages paid in the Government institutions. It seems, District Education Officer has opined that recognized institutions are required to follow the norms on par with the Government institutions. In this background, the Enforcement Officers of the department verified the service particulars of the complainant Surjeet Singh and found that there is a discrepancy in extending pay scale. The Enforcement Officers is of the opinion that institution manipulated towards contribution of provident fund. The respondent institution submitted representation on 28.10.2005 before the petitioner department stating that Surjeet Singh has already left the school and

he has been paid all dues which were due to him as per the provisions of the Act. He never objected regarding any discrepancy in payment of provident fund, while he was in service, even though he acted as officiating Principal in the institution and who had been authorized to sign the cheques relating to the provident fund that the school was making less payment of the provident fund, he could have pointed out at that time also, on the other hand his intention was to damage the reputation of the institution. The institution – management vide their letter dated 28.11.2005 stated that the salary was bifurcated into five components i.e. Basic, HRA, CCA, CF, NPA, Allowances from 1991 to February 2004 and the PF contribution was being remitted with reference to the basic part of the salary and this was in vogue and continued till February 2004. From March 2004 onwards, each and every allowances were merged with the basic salary and the provident fund contributions are being remitted on the total consolidated salary till now in respect of each of the institution employees. In this background Enforcement Officers have come to the conclusion that the institution should not have split their wages unreasonably and should not have left scope for any subterfuge and violation of the provisions of the Act and the provident fund contribution should have been with reference to pay scale attached to the post. Since it is a recognized institution by the State of Haryana, pay scale of the post is required to be taken on par with the Government institution employees. Therefore, in respect of Surjeet Singh, the respondent-department have analyzed the facts and calculated difference on which provident is payable etc. Thus the respondent-institution has been advised to deposit a sum of Rs.74,361/- failing which it will be recovered under Section 8 F of the Act.

4) The respondent-institution feeling aggrieved by the order of the Assistant Provident Fund Commissioner, vide Annexure P-1, preferred a review under Section 7B of the Act and Scheme framed thereunder. Review application is rejected by the Assistant Provident Fund Commissioner. Still aggrieved by the order of the department, as well as, review, the respondent -institution preferred an appeal before the Appellate Authority. The Appellate Authority allowed the appeal on 26.4.2011. Hence the petition.

5) Learned counsel for the petitioner submitted that the respondent-institution have manipulated the records so as to make lesser contribution which is contrary to the law and their contention is that no records are available. Therefore, there is no infirmity in the order of the department determining the difference of provident fund contribution to be paid by the respondent-institution on behalf of Surjeet Singh. The Appellate Authority allowed the appeal in favour of the institution on the sole ground that provident fund department has no power to determine the pay scale for an employee in an institution. The petitioner-department submitted that pay scale of an employee institution has not been determined by the department-petitioner. On the other hand, Enforcement Officers have investigated from various angle how the institution-respondent have cheated the department in not remitting appropriate provident fund contribution in so far as ex-employee of the institution Surjeet singh and it has been calculated with reference to the scale of pay read

with the post with reference to the Government institution employees since records of the respondent-institution were not made available. Thus the petitioner -department did not determine pay scale of an employee in the institution. Only for the purpose of calculation if an employee working in Government institution what would have been his pay, should have been same in a private recognized institution, that has been taken into consideration. Therefore, the Tribunal erred in holding that petitioner-department has determined pay scale for the purpose of provident fund contribution. In view of these facts and circumstances, the Tribunal's decision dated 26.4.2011 (Annexure P-4) is liable to be set aside. In support of this contention, learned counsel relied on the various judgment to contend that some of the allowances are part and parcel of wages, therefore, there is no infirmity in determination of provident fund contribution.

6) On the other hand, learned counsel for the respondent-institution submitted that there is no infirmity in the Tribunal's order. It is very true that petitioner-department have determined the pay scale of the post of teacher on par with the Government institution and then determined the difference of provident fund contribution to be paid by the institution on behalf of ex-employee Surjeet Singh.

7) Heard learned counsel for the parties.

8) Perusal of the order dated 16.2.2006 (Annexure P-1) of the petitioner passed under Section 7-A of the Act, the petitioner-department investigated the matter relating to contribution of the provident fund behind the back of the respondent-institution. They have collected information through District Education Officer and

thereafter they have determined the difference of provident fund to be paid by the institution on behalf of Surjeet Singh. No opportunity has been given to the respondent-institution before determining the provident fund contribution with reference to pay scale etc. On this short ground, the matter is required to be remanded to the petitioner-respondent to pass a fresh order. Annexure P-1 is treated as show cause notice to the respondent-institution. The respondent-institution is directed to file their necessary objection with records. The petitioner-department is directed to give personal hearing to the respondent-institution before passing a fresh order under Section 7-A of the Act. In view of these findings, the order dated 26.4.2011 of the Tribunal (Annexure P-4) is set aside and the matter is remanded to the petitioner-department for taking necessary action. The respondent-institute is directed to file their objections alongwith records before the petitioner-department within a period of two months from today. Thereafter, the petitioner-department is directed to pass final order within a period of three months after giving reasonable opportunity to adduce necessary evidence to the respondent-institution.

9) The petition stands disposed of.

(P.B. Bajanthri)
Judge

June 3rd, 2016
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