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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5795/2015 & CM Appln. No.3369/2016, 13077/2015, 10430/2015

BANASTHALI VIDYAPITH ..... Petitioner

Through Mr. Mukul Talwar, Sr. Advocate with Mr. Vanshdeep Dalmia and S. Kumar, Advocates.

versus

UNION OF INDIA & ORS ..... Respondents

Through Mr. Rohan Gupta and Mr. Vishal Mahajan, Advocates for R1.
Mr. R. R. Rajesh, Advocate for R2 and R3.

CORAM:
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

O R D E R

% **17.02.2016**

This writ petition has been instituted by Banasthali Vidyapith with the grievance that the respondent has erroneously rejected the plea of the petitioner to be treated as an establishment to which the Act does not apply since it satisfies the test of Section 16 (1) (b) of Employees' Provident Funds and Miscellaneous Provisions Act, 1952; on the mistaken conclusion that the question of keeping the petitioner Institution out of the purview of the said Act with reference to Section 16 (1) (b) thereof, "does not arise for consideration at the departmental level after the order dated 31.07.2014 passed by the Hon'ble Delhi High Court".

At the same time, as regard the request of the petitioner for exemption under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the respondent has called upon the petitioner to forward a complete proposal for exemption in terms of the prescribed proforma along with the latest profit and loss account as per the Provident Fund Trust Rules, so that the same can be duly considered by the respondent.

As far as the issue of Section 16 (1) (b) is concerned, counsel for the respondent as referred to paragraph 5 of the decision of this Court dated 31.07.2014, which states as follows;

> "5. A plain reading of Section 16(l)(c) of the Act indicates that for an organization to be excluded under the said provision, it is necessary that the organization be one which is set up under a Central, Provincial or a State Act. In the present case, although the petitioner is recognized as a deemed university under the University Grants Act, 1956, it would not be a University that is established by any Central, Provincial or a State Act. There is a clear distinction between statutes that establish an organization and statutes that may govern certain aspects of their functioning. Undoubtedly, the petitioner would have to comply with certain provisions of the University Grants Act, 1956 but that does not mean that the petitioner has been established under the said Act. In this view, the decision of respondent no.3 that the petitioner cannot be excluded from the purview of the Act cannot be faulted."

He submits that the aforesaid observations of this Court make it obvious that the petitioner does not satisfy the test prescribed in Section 16 (1) (b) also.

To my mind, such a proposition has no basis, *inter alia*, for the reason that the Legislature has thought it fit to prescribe three separate tests in the three sub-sections of Section 16 (1) with regard to the type of establishment to which Employees' Provident Funds and Miscellaneous Provisions Act, 1952 shall not apply. It is also clear that each of the tests is disjunctive and independent of the others since they have been prescribed in the alternative by the expression, "or". Not only that, if the test for the inapplicability of the Act was the same, there was no need for the Legislature to prescribe separate sub-clauses.

Apart from that, a plain reading of paragraph 5 of the said decision of this Court dated 31.07.2014 relied upon by counsel for the respondent makes it obvious that what was being examined there was the test prescribed under Section 16 (1) (c) of the Act; which limits itself to an organization set up under the Central, Provincial or State Act, and nothing more. It was in that context that the Court concluded that the petitioner did not satisfy that test because it could not be said to have been an organization which is set up under a Central, Provincial or State Act. Nothing more has been examined. On the other hand, the test prescribed in Section 16 (1) (b) is that the Act would not apply to an establishment, "belonging to or under the control of the Central Government or a State Government....", whose employees are entitled to benefits of provident fund or pension in accordance with appropriate schemes or rules as envisaged in the sub-section. There is nothing to indicate that the Court had examined this aspect of the matter or applied this test whilst considering whether the petitioner is entitled to exemption.

Under the circumstances, the impugned communication dated 28.04.2015 is quashed to the extent it rejects the request of the petitioner dated 30.09.2014 to be considered as an establishment to which the Act does not apply in terms of Section 16 (1) (b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. And the matter is remanded back to the respondent for reconsideration of this aspect of the matter and to dispose off the same by a speaking order within eight weeks from today.

At the same time, and without prejudice to this stand of the petitioner; which is to be examined and disposed off by the respondent; the petitioner would also be at liberty to apply under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for exemption, after complying with the necessary formalities. The said application would also now be made within eight weeks from today.

For the removal of any doubt, it is made clear that in case the petitioner remains dissatisfied with the outcome of either consideration bestowed by the respondent in terms of the aforesaid order to its plea under Section 16 (1) (b) or to its request for exemption under Section 17, it would be open to the petitioner to take all remedies including by way of writ petition in case it is so advised; and no opinion has been expressed on the merits of both these aspects of the matter one way or the other.

At the same time, my attention has also been drawn to the fact that an enquiry had been initiated by the respondent under Section 7 (A) of the

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 against the petitioner, and in respect of which, it was ultimately communicated to the petitioner on 30.06.2015 that further action in this regard would be taken subject to the disposal of this writ petition.

Looking to the unique circumstances in which these two rounds of litigation have taken place, i.e., the previous WP(C) No.3390/1998, which was decided on 31.07.2014, and the instant matter; and also in view of the fact that according to the petitioner, the Scheme of the petitioner, which has been in operation since the year 1951, is more beneficial than the Scheme framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; the respondent shall keep all further proceedings with respect to the said enquiry under Section 7(A) of the Act under abeyance till the decision on both the aforesaid aspects of the matter.

The petition, along with CM Appln. Nos. 3369/2016, 13077/2015, 10430/2015 Nos. is disposed off.

SUDERSHAN KUMAR MISRA, J

FEBRUARY 17, 2016

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