IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.901 of 2011

Arising out of

Civil Writ Jurisdiction Case No.11891 of 2010

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The Assistant Provident Fund Commissioner, Bihar, Patna

... ... Appellant/s

Versus

1. M/S Swastic Alluminium Works, Kajichak, Barh, Patna through its Proprietor, namely, Birendra Prasad Sah, Son of late Sheo Lal Sah, Resident of Mohalla- Kajichak, P.S. Barh, District- Patna

2. The State of Bihar through the Secretary, Industrial Department, Government of Bihar, Patna

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajoday Satyjeet, Advocate
For the State	:	Mrs. Kalpana, A.C. to G.A. 8
For Private Respondent	:	Mr. Manish Kumar-2, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-09-2017

Seeking exception to an order dated 13.01.2011 passed by the learned Writ Court in C.W.J.C. No. 11891 of 2010, this appeal has been filed under Clause 10 of the Letters Patent.

Challenging an order purported to have been passed under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and an order passed by the Appellate Tribunal dismissing an appeal filed under Section 7J the writ petition in question was filed by the respondent establishment and the writ petition having been allowed, this appeal by the Provident Fund Organization under Clause 10 of the Letters Patent.

Learned counsel for the appellant invited our attention to the order (Annexure-1) dated 22.08.1994 said to have been passed under Section 7A of the Act of 1952 and argued that as the establishment did not cooperate in the inquiry and inspite of repeated opportunities being granted to them between 15.11.1993 up to 22.03.1994 when they did not appear, the proceedings were held *ex parte* and based on the documents that came on record, the assessment has been finalized under Section 7A and the appeal filed was also dismissed by the

Appellate Tribunal on 26.05.2010 vide Annexure-3 and, therefore, in interfering with the concurrent orders passed by the authorities under Section 7A and by the Appellate Tribunal under Section 7Q, the learned Writ Court has committed material illegality. Learned counsel emphasized that the Provident Fund Enforcement Officer inspected the records produced, proof of the establishment having engaged more than 20 or more people, and based on the report of the inspection conducted, the impugned action has been taken and, therefore, in interfering with the same, it is argued, that the learned Writ Court has committed an error. It is submitted by learned counsel that the Writ Court proceeded under the assumption that no inquiry was conducted under Section 7A, there was no determination of liability under Section 7A and without an inquiry report under Section 7A the action was quashed. This, according to the learned counsel, is unsustainable for the simple reason that Annexure-1 dated 22.08.1994 which was challenged before the Writ Court was itself an order under Section 7A and, therefore, the learned Writ Court misdirected itself in holding that there was no inquiry under Section 7A and no inquiry report was submitted.

Learned counsel for the respondent establishment refuted the aforesaid and argued that as proper inquiry under Section 7A was not conducted and there were materials before the Writ Court, namely, certificates issued by the Factory Inspectors and the Commercial Tax Authorities showing that the establishment remained closed from 1988-1992, there is no question of inspection being conducted in the year 1990, the factory being functional in the year 1992 and determination of liability for the period when the factory was closed. Accordingly, it is argued that the learned Writ Court has not committed any error in interfering with the matter.

We have heard learned counsel for the parties and we find that a patent illegality has been committed by the learned Writ Court in holding that no inquiry under Section 7A was conducted. On the contrary, it is the respondent establishment themselves who had filed the appeal before the Employees' Provident Fund Appellate Tribunal, New Delhi being Appeal No. 425(3)2005 challenging the order passed under Section 7A on 22.08.1994 and when their appeal were dismissed, writ petition was filed. That being so, the finding recorded by the learned Writ Court to say that there is no inquiry under Section 7A or no order has been passed under Section 7A is an incorrect finding, which is not borne out from the record. On the contrary, the order Annexure-1 dated 22.08.1994 is an inquiry conducted for determining the liability for the period 12/90 to 7/93 and after inquiry the order in question has been passed under Section 7A.

That being so, we hold that in this case the liability has been determined after causing an inquiry under Section 7A. Having held so, we are now required to consider as to whether the inquiry conducted under Section 7A is an inquiry in accordance with law which can be approved and the liability sustained.

On a perusal of the impugned order Annexure-1 dated 22.08.1994 passed by the authority under Section 7A, we find that proceedings were undertaken for assessing the liability on the establishment for the period from 12/90 to 7/93 and verification of records and inspection of the establishment was conducted by the Enforcement Officer and based on the same the impugned action was taken. However, on a perusal of the order passed, we find that except for holding that the dues have been determined after assessing there to be 25 employees who are paid wages at the rate of Rs. 25/-, there is nothing available on record to indicate as to who are the employees employed in the establishment, what is their number, their particulars, the period of their engagement, the basic pay paid to them, other allowances or any benefit paid to them and how and on what basis the documents have been brought on record. The order refers to inspection by the Enforcement Officer who found 25 workers working in the factory premises. Neither the report of the Enforcement Officer is discussed in the order passed under Section 7A nor is there any reference to the said report of the Enforcement Officer in the inquiry conducted under Section 7A. Even if the inquiry under Section 7A was conducted ex parte, it was incumbent upon the Provident Fund Authorities exercising statutory power under Section 7A to pass a speaking order showing the materials based on which the assessment was done and the findings are recorded. In the present case, the order is passed without referring to any material, without there being any document or evidence to show as to what is the number of the workers working, what are their salary and various other incidental materials which are relevant for determining the provident fund dues including what is the contribution of the employer to be deposited every month and how they have defaulted in depositing the contribution. That being so, it is a case where the order under Section 7A has not been passed properly in accordance with law and even though the respondents may be justified in proceeding ex parte in the matter after granting more than 15 opportunities to the establishment to submit their say we cannot approve the order as it does not show application of mind, assessment of relevant material and passing of a speaking order.

That apart, the question as to whether the establishment was functioning or closed, based on the certificate issued by the Commercial Taxes Authorities and the Factory Inspector, has also to be taken note of and this aspect considered while conducting the inquiry under Section 7A. All these having not been done, we allow this appeal in part, quash the order passed by the learned Writ Court dated 13.01.2011 passed in C.W.J.C. No. 11891 of 2010 so far as it holds that no inquiry under Section 7A has been held, remand the matter back to the Assistant Provident Fund Commissioner, Patna for proceeding afresh in the matter, hold an inquiry afresh in accordance with law under Section 7A. We direct that the respondent establishment shall appear through its representative before the Assistant Provident Fund Commissioner, Patna on 31st of October, 2017 and on the same being done, the Statutory Authority shall proceed to conduct an inquiry as contemplated under Section 7A of the Act, grant opportunity to the establishment to give their say in the matter and thereafter take a final decision within a reasonable period of time. Needless to emphasize that if the establishment fails to appear on 31st of October, 2017 or do not cooperate, on subsequent date the authorities shall be free to proceed in the matter in accordance with law.

With the aforesaid, the Letters Patent Appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
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