IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11998 of 2011

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Ram Krishna Residential High School, Krishnapatti, Jamui through its proprietor Sri Bijay Kumar Singh, resident of Krishnapatti, P.O-Jamui, District-Jamui

.... Petitioner/s

Versus

1. The Regional Provident Fund Commissioner, Serpentine Road, R.Block, Road No-6, Patna-1
2. The Assistant Provident Fund Commissioner-Cum-Enquiry Officer, Adampur Chowk , Bhagalpur, Bihar
3. The Employees Provident Fund Appellate Tribunal, New Delhi through its Presiding Officer
4. The Recovery Officer, Office of the Recovery Officer, Employees Provident Fund Organization, Labour Ministry, Govt. of India, Adampur Chowk, Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gajendra Pratap Singh, Adv.
Mr. Raghubir Chandrayan, Adv.

For the Respondent/s : Mr. Jai Prakash Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-11-2017

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. This writ petition has been filed by the petitioner for quashing of (i) the assessment order dated 13.07.2006 passed by the Assistant Provident Fund Commissioner, Bhagalpur under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'EPF & MP Act'), (ii) the appellate order dated 20.05.2011 passed in A.T.A. No.669(3) of 2006 by the Employees' Provident Funds Appellate Tribunal, New Delhi (for

short 'Tribunal') by which appeal preferred by the petitioner against the order of assessment has been dismissed and (iii) the order dated 14.06.2011 passed by the Recovery Officer by which the Principal of the School has been noticed to show cause why warrant of arrest be not issued against him for recovery of arrears and interest payable under Section 7-Q of the EPF & MP Act.

3. Pursuant to the order dated 31.10.2017, learned counsel for the respondent has produced the record of 7-A proceeding before the Employees Provident Fund Authority. It would be manifest from perusal of the record that the petitioner Establishment Residential Ram Krishna High School was allotted Code No. BR/25278 for the period 01/2003 to 07/2005 in terms of Section 16(1)(d) of the EPF & MP Act. Thereafter, an enquiry was initiated under Section 7-A of the EPF & MP Act against it on 09.11.2005, the date on which the Principal of the school appeared, but the proceeding was thereafter adjourned to 28.11.2005, 03.01.2006, 07.02.2006, 06.03.2006, 24.04.2006 and 29.05.2006. The record would further reflect that the Principal or the proprietor of the establishment failed to appear on the dates so fixed. The petitioner also failed to file any written statement in the matter. Ultimately, on 13.07.2006, the assessing authority, on the basis of materials available on record, assessed the dues payable under the EPF & MP Act and ordered that as the establishment failed

to deposit the provident fund and its allied dues for the notice period, he assessed the dues under Section 7-Q of the EPF & MP Act as on 30.06.2006. He also ordered that the amount assessed under Section 7-A and 7-Q must be deposited within fifteen days of the receipt of the order. The said order passed by the assessing authority was challenged in appeal by the petitioner before the Tribunal in A.T.A. No. 669(3) of 2006.

4. Mr. Gajendra Pratap Singh, learned counsel appearing for the petitioner submitted that the teachers of the school are excluded for the purpose of applicability and computation of number of employees. According to him, if they are excluded the number of employees of the school never reached upto twenty in any single month since the very first month of incorporation, but despite that total strength of the employees never reached upto twenty, the respondents without examining the strength of the school and without assigning any valid reason as to how the school comes under the purview of EPF & MP Act, issued order of coverage and assessed the dues thereon. He submitted that number of teachers including non-teaching staffs of the school is less than twenty and till date number did not reach upto twenty. He submitted that an ex-parte order was passed by the respondents without enquiry and without verifying the records for the purpose of actual assessment. On these grounds, he submitted that coverage of Establishment under the EPF & MP Act is wholly illegal and against the provisions of the Act.

5. On the contrary, Mr. Jai Prakash Verma, learned counsel appearing for the respondents, submitted that the petitioner Establishment was covered under the EPF & MP Act with effect from 08.02.2005 pursuant to an enquiry conducted by the enquiry officer, who found that there were fifteen teaching and six non-teaching staffs working in the Establishment. He submitted that on 27.07.2004 the Principal of the Establishment had himself submitted the details of the employees working in the school, which would show that twenty employees were working in the Establishment. He submitted that in view of the strength of the employees, the Establishment comes within the purview of EPF & MP Act.

6. I have heard learned counsel for the parties and carefully perused the record.

7. In order to satisfy myself regarding the facts of the case, I have also perused the original record of 7-A proceeding produced by the respondents. Basically, the petitioner has challenged the impugned orders on three grounds. The first objection taken by the petitioner is that the school teachers are not the employees under the EPF & MP Act, the second objection of the petitioner is that number of employees in the school never reached upto twenty in any single month and the third objection of the petitioner is that without conducting any enquiry and verifying the records of the school assessment order has been passed.

8. On perusal of the orders impugned passed by the 7-A authority and appellate authority under Section 7-I of the EPF & MP Act and the original record of the 7-A proceeding, I find no substance in the grounds taken by the petitioner in the present writ petition. It is settled position in law that school teachers are employees under Section 2(f) of the EPF & MP Act, as they are employed for wages from the employer. There is nothing on record to show that the teachers employed in the school were "exempted employee" under Section 2(ff) and the petitioner Establishment was an "exempted Establishment" under Section 2(fff).

9. So far as the contention of the petitioner that number of the employees in the school never reached upto twenty in any single month is concerned, the same cannot be accepted in view of the fact that the Principal of the School himself provided the details of the employees working in the school on 27.07.2004, which has duly been verified, signed and stamped by him. The petitioner has not even denied the bona fide of the list of the employees submitted by the Principal of the School. Since the Principal of the School himself has given details of the employees and has shown number of the

employees in the school as twenty, no error can be found with the order of assessment passed by the 7-A authority or the appellate order passed by the appellate authority. As far as grant of opportunity of hearing is concerned, it would be manifest from the record that after an enquiry was initiated under Section 7-A of the EPF & MP Act against the Establishment, on 09.11.2005, the Principal of the Establishment himself appeared. Thereafter, the proceeding was adjourned to several dates, i.e., 28.11.2005, 03.01.2006, 07.02.2006, 06.03.2006, 24.04.2006 and 29.05.2006, but the Principal and the Proprietor of the Establishment not only failed to appear on the given dates in the proceeding, they also failed to file any written statement or to contest the matter in any manner. Thus, ultimately on 13.07.2006, the assessing authority, on the basis of materials available on record, assessed the dues payable under EPF & MP Act and ordered that the amount assessed under Sections 7-A and 7-Q of the EPF and MP Act must be deposited within a period of fifteen days on receipt of the order.

10. It is apparent from the record that before passing the order, the 7-A authority had given ample opportunity to the petitioner, but being fully aware of the on going proceeding under Section 7-A of the EPF & MP Act before the authority, the petitioner chose not to contest the matter and, as such, the petitioner cannot

raise such dispute before this Court in writ jurisdiction. I further find that as the petitioner failed to produce the relevant records and 7-A authority determined the dues on the basis of minimum wages applicable to the employees.

11. In view of the discussions made above, the Court is of the opinion that there is no infirmity in the orders under challenge.

12. The writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/Md.S

AFR/NAFR	NAFR
CAV DATE	N/A
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