

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1442 of 2015

IN

Civil Writ Jurisdiction Case No. 3263 of 2007

- =====
1. The Central Board of Trustees, Employees Provident Fund Organization through the Assistant Provident Fund Commissioner (Legal), Employees Provident Fund Organization, Regional Office, R.Block, Road No. 6, P.S. - Sachivalaya, District - Patna.
 2. The Regional Provident Fund Commissioner, Employees Provident Fund Organization, Regional Office, Bhavishya Nidhi Bhawan, Serpentine Road, R.Block, Patna.
 3. The Assistant Provident Fund Commissioner, Bhagalpur Employees Provident Fund Organization, Sub-Regional Office, Adampur Chowk, Bhagalpur.

.... Appellant/s

Versus

Dr. Mritunjay Kumar, Son of Late Tapaswi Kumar Choudhary, Proprietor of Tapaswi Nursing Home, Adampur Chowk, Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajeev Kumar Verma
Mr. Prashant Sinha

For the Respondent/s : Mr. Alok Kumar Sinha
Mr. Indrajeet Bhushan and Mr. Manish Kumar

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 06-11-2017

Seeking exception to an order dated 27.07.2012 passed by the learned Writ Court in CWJC No. 3263 of 2007 this appeal has been filed under Clause 10 of the Letters Patent by the Provident Fund Organization.

There is an inordinate unexplained delay of more than 967 days in filing of this appeal and we see no reason to condone the



delay.

That apart, we find that the respondents challenged the order passed by the Provident Fund organization Annexure-A dated 23.05.2006 exercising the manner under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (Hereinafter referred to as the '1952 Act') It was the case of the applicant that 20 or more employees were never employed in the institution and, therefore, the provision of the 1952 Act will not apply to the establishments.

The learned Writ Court found that in slip shot manner without there being any evidence to establish in a proceeding under Section 7-A that the establishment has employed more than 20 persons the writ petition has been allowed finding that the requirement of law as laid down by the Supreme Court in the case of **Food Corporation India vs. Provident Fund Commissioner [(1990) 1 SCC 68]** has not been complied with. Even though learned counsel for the Provident Fund Organization argued that the order under Section 7-A is not mechanical order and is based on an inspection conducted by the inspector wherein 20 or more persons were found to be working in the Establishment. However, on considering of the impugned order passed under Section 7-A of the 1952 Act on 23.05.2006 it is seen that nowhere in the order passed



under Section 7A of the Act is there any whisper with regard to inspection report or the findings recorded in the inspection report and particulars of the persons who are working. Even the inspection report was not produced before the Writ Court nor is it available before us. On the contrary, the order passed under Section 7-A as held by the learned Writ Court is a cryptic order, does not meet the requirement of law. It is not indicated as to what is the evidence based on which employment of 20 or more persons is found to be established even the name and particulars of the employees and the period of their working and the salary paid are not indicated. There is no whisper to any inspection report or finding recorded in the inspection report.

That being so, in allowing the writ petition and quashing the order under Section 7-A of the 1952 Act the learned Writ Court has not committed any error.

The appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

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