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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5479 OF 2017

Central Board of Trustees Employees' Provident Fund ...Petitioner
vs
M/s. St. Mary Church Nursury
English Medium School ...Respondent
.....
Mr. V.K. Wasnik, for the Petitioner.

Mr. A.K. Gopalan, i/b. Haresh Mehta & Co., for the Respondent.
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CORAM : PRASANNA B. VARALE, J.

DATED: 13 SEPTEMBER, 2017

P.C. :

. Heard learned Counsel for the Petitioner.

2. A limited controversy is involved in the present writ petition. As such, by consent of the parties, the petition is taken up for hearing and decided at the stage of admission.

3. The petition challenges the order passed by the learned Presiding Officer of the Employees Provident Fund Appellate Tribunal, New Delhi, dated 18 May 2016. The brief facts giving rise to the petition can be summarised as follows :-

The Respondent St. Mary's Church runs a English Medium Nursery School. Certain complaints were received to the department raising a grievance that though the amount of Provident Fund is deducted by the said Institute, the same is not credited in the account of these employees. An enquiry was conducted invoking the powers under Section 7-A. An opportunity of hearing was granted to the Respondent. Written say was submitted. It was the stand of the Respondent that the place of the Respondent is a religious worship place and is liable for coverage under Section 1(3)(b) of EPF & MP Act. It was also the stand of the Respondent that St. Mary Church English Medium School does not come within the ambit of Section 1(3)(b). These are two independent entities and being represented through the Secretary and the School Committee, respectively. The Enforcement Officer was directed to visit the establishment, verify the record of enquiry and submit the depositions. The Enforcement Officer, who was directed to submit report, submitted report. Though the opportunity granted to the Respondent, the Respondent failed to produce the requisite documents from 2005 onwards. The Enforcement Officer, on the basis of the material collected and verified submitted the report that the Respondent was having 18 employees in the month of September 2005. There were additional two employees engaged by the establishment in the month of September 2005. Thus, the establishment engaged in total 20 employees. As the establishment crossed the requisite strength, the establishment was to be covered with effect from 1 September 2005 under Schedule head “Educational Institute” under Section 1(3)(b) of EP & MP Act, 1952. The Assistant Provident Fund Commissioner, Regional Office Pune also had gone through the material, namely, the Enforcement Officer's report, deposition, say of the establishment and various documents. On verification of the material referred to above, the

Assistant Provident Fund Commissioner arrived at a conclusion that the School and the Church are the part and parcel of the same establishment and whatever benefits given to the school employees under EPF Act are ought to have been given to the Church employees. The Assistant Provident Fund Commissioner also observed that the Employees Provident Fund was maintained by the Church in respect of the complainant for nearly 37 years. As such, the employees could not have been denied the Provident Fund benefits. Thus, the Assistant Provident Fund Commissioner, by exercising his powers, passed the order. The order was then subjected to challenge by the Respondent by preferring an appeal before the Employees' Provident Fund Appellate Tribunal. The learned Presiding Officer of the Tribunal arrived at a contrary finding to the finding of the Assistant Provident Commissioner. The learned Presiding Officer of the Appellate Tribunal found that there was no material to arrive at a conclusion that the institutions are internally linked to each other and are dependent on each other. It was the observation of the Appellate Tribunal that the material was falling short to conclude that there is a financial integrity and functional integrity on these two institutions for the applicability of the Act. Learned Tribunal hold that the order passed by the Commissioner was passed on surmises and conjunctures. Resultantly the Tribunal by allowing the appeal set aside the order dated 13 January 2014 passed by the Assistant Provident Fund Commissioner.

4. Learned Counsel appearing for the Petitioner vehemently submitted that the Appellate Tribunal erred in holding that there was no material before the authority, namely, Assistant Provident Fund

Commissioner, to arrive at a conclusion that these two institutions are either having their financial integrity and functional integrity and the finding of the Assistant Provident Commissioner is on the basis of surmises and conjunctures. Learned Counsel for the Petitioner submitted that there was sufficient material before the Assistant Provident Fund Commissioner, and more particularly, the accounted audits and the balance sheets clearly showing the financial integrity between these two institutes. Learned Counsel for the Petitioner then submitted that the said Act is a social welfare legislation, and on an erroneous finding if the employees are deprived of their lawful entitlements, the same would frustrate the object of the Act. Learned Counsel for the Petitioner then submitted that though the Assistant Provident Fund Commissioner failed to refer the documents, i.e. balance sheet, the reasoning of the Assistant Provident Fund Commissioner was clearly indicative of the fact that all the necessary material was assessed and scrutinized by the Assistant Provident Fund Commissioner and the Assistant Provident Fund Commissioner on the basis of such material passed the order. Learned Counsel placed on record the compilation of the documents, which was before the Assistant Provident Fund Commissioner. Learned Counsel submitted that in the communications forwarded by the Respondent themselves referred to the claim lodged by the employee for the Provident Fund, the material was before the Assistant Provident Fund Commissioner to show that there was a contribution deducted against these employees at the instance of the Respondent. He also refers to the copies of balance sheets of year 2009, which was the year of consideration before the authority concerned. Learned Counsel for the Petitioner then submitted that the Appellate Tribunal even could have called for the record for its satisfaction, while deciding the appeal, and if this exercise would have been undertaken by the Appellate Tribunal, the Tribunal could have arrived at another finding than the finding recorded by the Appellate Tribunal.

5. Learned Counsel appearing for the Respondent opposes the petition on the ground that no error is committed by the Appellate Tribunal.

6. On perusal of the material, more particularly, the compilation, which was undisputedly before the Assistant Provident Fund Commissioner, I am of the opinion that the learned Counsel for the Petitioner was justified in submitting that the Appellate Tribunal failed to consider the material in proper perceptive. The learned Appellate Tribunal erred in allowing the appeal only on assumption that the material before the Assistant Commissioner was filling short and there was no sufficient material produced before the Commissioner in respect of establishing the financial integrity or functional integrity of these two institutes. There is also considerable merit in the submission of the learned Counsel that the Appellate Tribunal could have undertaken an exercise of calling the record from the Assistant Commissioner for its satisfaction and could have recorded the finding on verifying the record. In view of the above referred facts, in my opinion, the petition can be disposed of by remitting the matter back to the Appellate Tribunal for consideration afresh. Needless to state that the Appellate Tribunal, by giving an equal opportunity of hearing to the parties may pass appropriate orders afresh as expeditiously as possible. In my opinion, the

exercise of decision afresh by the Appellate Tribunal would also cause no prejudice to the Respondent as they are also permitted to participate in hearing before the Tribunal and raise their grounds or submission. The petition is disposed of in above terms.

7. Learned Counsel invited my attention to the compilation. The same is taken on record and marked "X" for identification. Learned Counsel for the Respondent opposes the petition. He submits that the affidavit in reply is filed by the Respondent.

(PRASANNA B. VARALE, J.)