THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION Nos.17399 and 22396 of 2010

COMMON ORDER:

Since these two writ petitions are interrelated and filed by the same petitioner, this Court deems it appropriate to dispose of these writ petitions by way of this common order.

In W.P.No.17399 of 2010, challenge is to the action of the respondents in not returning a sum of Rs.20,00,000/-, which the respondents collected from the petitioner pending appeals preferred against the assessments made.

W.P.No.22396 of 2010 challenges the order passed by the Assistant Provident Fund Commissioner and Authority under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, "the Act") vide proceedings No.AP/SRO/KDP/Enf/AP/25107/NLR/2010/1229, dated 18.08.2010.

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents apart from perusing the material available before the Court.

The deponent of the writ affidavits claims to be the correspondent of the petitioner High School. Earlier, questioning the action on the part of the respondents in determining the liability of the petitioner's School under the provisions of the Act, petitioner's School approached this Court by way of filing W.P.No.25494 of 2006. This Court disposed of the said writ petition by way of an order, dated

22.12.2006, granting liberty to the petitioner to prefer appeals against the impugned assessments made by the Assistant Provident Fund Commissioner with a further direction to the appellate authority to entertain the same and to pass appropriate orders in accordance with law. This Court also observed that the petitioner also deposited a sum of Rs.20,00,000/- and further restrained the respondents from recovering the balance of the alleged arrears pending appeals. Thereafter, the petitioner filed as many as five appeals against different assessment orders vide ATA.Nos.58(1), 386(1), 387(1), 388(1) and 389(1) of 2007 before the Employees Provident Fund Appellate Tribunal, New Delhi (for short, "the Tribunal"). The Tribunal vide common order, dated 17.06.2009, allowed the said appeals. Paragraph 4 of the said order reads as under:

> "Heard counsels for both the parties. On perusal of the impugned orders in all the five appeals, the enforcement officer who has collected the coverage proforma to cover the appellant establishment under the EPF & MP Act, 1952, and the employees list furnished at the reverse side of the proforma for coverage shows that he has misrepresented Smt. Rekha who is the wife of the appellant. Out of list of 20 employees furnished by the EO at the back side of the proforma for coverage one is Police Officer, some are Government Employees, Students, Agriculturists and neighbors. It clearly indicate that majority of names furnished as employees are the relatives of the appellant. Further, majority of the names mentioned in the coverage notice are staying at different places/districts during the relevant disputed period. It shows that the EO had deliberately inserted some of the names in the list so as to cover the appellant establishment under the Act. While preparing the list of the beneficiaries, it is incumbent on the Inspector to note down the name of the persons, their designation and wages drawn etc. In this case, no fair inspection has been done by the EO. Accordingly, the coverage intimation given or the decision taken to cover the appellant establishments under the Act is bad in law and so is the levy of damages. Since the canons of law had not been followed by the 7-A authority in allotment of code

> number and consequential impugned orders are passed therefore it is clearly indicates that the coverage proposal and allotment of the code number is wrong the Act, does not apply to the appellant establishment and further consequential impugned orders is liable to be set aside. The appeals are allowed. Files be consigned to the record room. Copy of the order be sent to both the parties."

Pursuant to the above said order passed by the Tribunal, the petitioner filed W.P.No.17399 of 2010, praying for a direction to the respondents to return a sum of Rs.20,00,000/-, which the petitioner paid earlier. This Court, on 21.07.2010, issued notice before admission. Subsequently, the Assistant Provident Fund Commissioner and Authority under Section 7A of the Act, 2nd respondent herein, passed an order vide proceedings, dated 18.08.2010, under Section 7A of the Act, determining an amount of Rs.9,37,489/- with an observation that in the event of failure to remit the said amount, action would be initiated to recover the dues as per the provisions of Sections 8B to 8G of the Act besides launching prosecution under Section 14B of the Act. The said order, dated 18.08.2010, is the subject matter of W.P.No.22396 of 2010. On 21.09.2010, this Court while ordering notice directed the respondents not to take coercive steps pursuant to the order, dated 18.08.2010.

In response to the notices issued by this Court, counter affidavits have been filed on behalf of the respondents denying the averments in the affidavits filed in support of the writ petitions and in the direction of justifying the impugned action.

It is contended by the learned counsel for the petitioner, Sri Siva, that the impugned action on the part of the respondents, which culminated in passing of order, dated 18.08.2010, by the 2nd respondent, determining the liability against the petitioner is highly illegal, arbitrary, unreasonable, without jurisdiction and violative of Article 14 of the Constitution of India besides being opposed to the very spirit and object of the provisions of the Act. It is further submitted by the learned counsel that the 2nd respondent grossly erred in passing the order, dated 18.08.2010, totally ignoring the fact that the appeals filed by the petitioner before the Tribunal were allowed. It is further submitted that the 2nd respondent grossly erred in passing the order, as the same is without jurisdiction.

On the contrary, it is vehemently submitted by the learned Standing Counsel for the respondents that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and in the absence of the same, the impugned action is not amenable for any juridical review under Article 226 of the Constitution of India. It is further submitted that the 2nd respondent passed the impugned order, dated 18.08.2010, strictly in accordance with the provisions of the Act and as such no interference of this Court is warranted under Article 226 of the Constitution of India.

There is absolutely no controversy on the reality that earlier when the respondent authorities initiated action under the provisions of the Act, the petitioner approached this Court by way of filing W.P.No.25494 of 2006 and there is also no dispute as regards the fact that pursuant to the orders of this Court in the said writ petition, petitioner filed five statutory appeals against the assessment orders. It is also significant to note in this context that the Tribunal in its order, dated 17.06.2009, seriously deprecated the action on the part of the respondent authorities by observing that since the canons of law had not been followed by the 7-A authority in allotment of code number and consequential impugned orders are passed. The Tribunal further observed in clear terms that the coverage proposal and allotment of the code number is wrong and the Act does not apply to the Appellant Establishment and in categoric terms the Tribunal did set aside the orders impugned in the said appeals. There is no dispute that the said order passed by the Tribunal is intact and as the said order is staring at the 2nd respondent, the 2nd respondent, in the considered opinion of this Court, grossly erred in initiating action further against the petitioner for realization of the amount while quantifying the same as Rs.9.37.489/-. It is not the case of the respondents that the orders of the Tribunal, referred supra, are assailed before any forum and the same are not in force. Therefore, this Court is of the definite opinion that the impugned action on the part of the respondents in determining the amounts under Section 7A of the Act once again totally suffers from inherent lack of jurisdiction. Therefore, this Court has absolutely no hesitation to hold that the impugned action on the part of the respondents cannot be sustained in the eye of law.

For the aforesaid reasons, the writ petitions are allowed and the order of the 2^{nd} respondent passed vide proceedings No.AP/SRO/KDP/Enf/AP/25107/NLR/2010/1229, dated 18.08.2010, is hereby set aside and the respondents are directed to return the amount of Rs.20,00,000/- already paid by the petitioner with interest @6% per annum payable from the date of receipt of the said amount by them, within a period of six months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, shall also stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 21.06.2017
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