THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION NO.21433 OF 2005

ORDER:

Heard the counsel for the petitioner as well as the respondents.

In the present Writ Petition, the petitioner challenged the orders passed by the appellate Tribunal i.e. the first respondent in file No.ATA.No.389(1)/2001 dated 05.08.2005 confirming the order of the second respondent in file No.AP/32103/Enf-17/7-A/2001/236 dated 18.05.2001, as arbitrary, illegal and against the principles of natural justice.

The basic contention urged by the petitioner in the present Writ Petition is that the petitioner-company is not covered by the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("the Act" for brevity), since the petitioner-company had not engaged more than five to seven employees at any point of time. However, the third respondent herein submitted a report on 25.11.1997 and held that the petitioner-company will come within the purview of the Act. Aggrieved by the said action, the petitioner-company contested the applicability of the Act before the Assistant Provident Fund Commissioner under Section 7A of the Act. After hearing, the primary authority found that the petitioner-company is covered under the provisions of the Act. Aggrieved by the same, the petitioner filed an appeal before the Employees Provident Fund Appellate Tribunal. However, the same was also dismissed by orders dated 05.08.2005. Aggrieved by the same, the present Writ Petition is filed.

The counsel for the petitioner would specifically contend that the objections raised by him, in proceedings under Section 7A of the Act, are not properly appreciated, more particularly without giving an opportunity to cross-examine the witnesses and an opportunity of hearing.

A perusal of the orders of the primary authority as well as the appellate authority shows that the said petition is not considered in proper perspective. Therefore, this Court feels, in the peculiar facts and circumstances of this case, when three different reports are staring at the petitioner, an opportunity should be given to the petitioner to establish its case before the authority concerned.

Accordingly, the impugned order of the first respondent in file No.ATA.No.389(1)/2001 dated 05.08.2005 confirming the order of the second respondent in file No.AP/32103/Enf-17/7-A/2001/236 dated 18.05.2001 is set aside. However, since the Employees Provident Fund organisation has already passed final orders adjudicating liability of the petitioner-company at Rs.1,10,298/- as on 11.09.2004, the petitioner is directed to deposit a sum of Rs.75,000/- (Rupees seventy five thousand only) to the credit of the second respondent within a period of six (6) weeks from today, upon which the respondents are directed to issue notice to the petitioner calling upon him to produce the entire record relating to engaging of the employees from the year 1997 to till date. On such submission of the application, the authorities are directed to follow the mandatory procedure as contemplated under the provisions of the Act and pass appropriate

orders after giving opportunity of hearing and adducing evidence to the petitioner.

Subject to the above, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(P.KESHAVA RAO, J)

12th December 2017
RRB

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते