

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1588 of 1994 (O&M)
Date of Decision:-18.08.2017.

Managing Committee, M.L.A. Senior Secondary School, Jatauli, Gurgaon
.....Petitioner

Versus

The Regional Provident Fund Commissioner and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. M.S. Randhawa, Advocate for the petitioner.

Mr. Rajiv Sharma, Advocate for respondent No.1.

Mr. Rajesh Gaur, Additional A.G. Haryana.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has challenged the communication dated 18.8.1993, 22.9.1993 and 20.01.1994 (Annexure P-7, P-8 and P-12, respectively).

The petitioner is an aided institution. First respondent issued communication for depositing contributory Provident Fund for the period from December, 1987 to April, 1990. Since there was no response from the petitioner, first respondent proceeded to hold proceedings under Section 7-A of the EPF and MP Act, 1952. Petitioner was given opportunity more than a dozen times as is evident from the second paragraph of the 7-A proceedings. Consequently, an *ex parte* proceedings was drawn by the office of first respondent on 22.9.1993. Thereafter, recovery notice was issued to the petitioner on 19.1.1994 under Section 8-F of the EPF and MP Act, 1952.

Learned counsel for the petitioner submitted that records relating to contribution of Provident Fund was maintained by the District Education Officer under the State Government. As soon as receipt of communication from the first respondent relating to deposit of Contributory Provident Fund, petitioner informed the State Government authorities like District Education Officer, Director of Secondary Education, School Education, Haryana that there is a demand for depositing Contributory Provident Fund from the first respondent. At the same time, under certain guidelines and State Rules, Contributory Provident Fund was required to be maintained by the District Education Officer of the concerned district (in the present case Gurgaon District). Thus, petitioner was bound by the guidelines and State Rules issued by the Government. Consequently, petitioner could not participate in the process of 7-A proceedings conducted by the first respondent. Hence, the *ex parte* proceedings under Section 7-A of the EPF Act, 1952 is liable to be set aside and, consequently, recovery order passed under Section 8-F is required to be set aside.

On the other hand, learned counsel for respondent No.1 raised preliminary objection that against 7-A proceedings, petitioner has not availed or exhausted the remedy of appeal before the Appellate Authority. Learned counsel for the first respondent submitted that despite giving sufficient time to the petitioner, the same has not been availed when the proceedings under Section 7-A of the EPF and MP Act, 1952 was under consideration. In this regard, he has pointed out that in para 2 of the 7-A proceedings from 24.8.1990 to 30.09.1993, almost more than 3 years time was granted to the petitioner. The said period was availed for the purpose

petitioner, no interference is called for in respect of 7-A proceedings and recovery proceedings.

Heard learned counsel for the parties.

Insofar as preliminary issue relating to alternative remedy of appeal has not been exhausted, it is to be noted that writ petition was filed in the year 1994 and it is an admitted case. Therefore, relegating the matter to the Appellate Authority may not arise in view of various Supreme Court decisions. Accordingly, preliminary objection raised by the first respondent is hereby rejected. The petitioner's contention that he is bound by guidelines and rules framed by the State Government in respect of Contributory Provident Fund; how it is to be maintained and who has to maintain is concerned, the said contention cannot be accepted for the reasons that EPF and MP Act, 1952 is a Central Act and the petitioner is bound by the Central Act. State guidelines or Rules cannot override Central Act like EPF and MP Act, 1952. Therefore, any correspondence by the petitioner with the State officials may not give any benefit to the petitioner. Having regard to the conduct of the petitioner that he had not availed ample opportunity provided in the 7-A proceedings for more than 3 years. The petitioner has not made out a case so as to interfere with the 7-A proceedings and so also recovery proceedings initiated by the first respondent.

Accordingly, petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

August 18, 2017.

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Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.