

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.10806 of 2012

Date of Decision:20.09.2017

M/s S.H. Brick Gram Udyog Samiti

... Petitioner

Vs.

Employees Provident Fund Tribunal and others

... Respondents

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

Present : Mr. B.P.S. Virk, Advocate for the petitioner.

Mr. Rajesh Hooda, Advocate for respondents No.2 and 3.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the validity of the orders dated 15.4.2005 (Annexure P-1) and 16.05.2011 (Annexure P-2).

Petitioner is a company having the business of Bricks. They have engaged services of number of labourers. With reference to the nature of work, respondent-EPF department issued a notice for determination of EPF. Since there was no response to the number of notices as well as warrant issued by the competent authority for appearance and assisting in determining the EPF amount under Section 7-A of the EPF Act, EPF authority proceeded to determine an amount of Rs.345010/- for the assessment year in the month of March 2002 to December 2003. Thereafter, petitioner filed a writ petition without exhausting remedy of appeal for want of Presiding Officer in the Employees Provident Fund Appellate Tribunal (for short "EPFAT"). During pendency of the writ petition, Presiding Officer was appointed and EPFAT started functioning. Consequently, petitioner was permitted to approach EPFAT. Thus, petitioner preferred an

appeal before the appellate authority. Appellate authority decided the petitioner's appeal while affirming the 7-A proceedings. Hence, the present petition.

Learned counsel for the petitioner submitted that they are into the brick business which is seasonal work. Therefore, determination of EPF amount for the period from March 2002 to December 2003 at a stretch is not proper as there was break in service of the labourers due to seasonal work. It was further submitted that 7-A proceedings is an ex parte proceedings. Consequently, without hearing the petitioner, determination of the EPF amount to the tune of Rs.345010/- is incorrect. The appellate authority failed to appreciate the contention of the petitioner relating to ex parte as well without the presence of the petitioner, EPF authority proceeded to determine the EPF amount. Therefore, both EPF order as well as order passed by the appellate authority dated 15.4.2005 and 16.5.2011 are liable to be set aside.

Per contra, learned counsel for the respondents while resisting the petitioner's claim pointed out that petitioner's conduct may be taken into consideration since it has been record in the 7-A proceedings to the extent that number of notices as well as warrants were issued despite that petitioner failed to represent and assist in the 7-A proceedings. During 7-A proceedings, petitioner was represented by one Advocate for some time and without any assistance to the authority. No material have been placed on record like season work and labourers have worked for how many days/months etc. Thus, there is no infirmity in the 7-A proceedings dated 15.4.2005 so also order passed by the appellate authority dated 16.5.2011.

Hence, petitioner has not made out a case so as to interfere with the

impugned orders.

Heard learned counsel for the parties.

Petitioner's contention is that petitioner is into the brick business which is seasonal, therefore, determination of EPF amount for the month of March 2002 to December 2003 is at stretch is incorrect. No doubt the petitioner has been provided sufficient opportunity including issuance of bailable warrants for appearance in the 7-A proceedings. The same has not been utilized by the petitioner to produce relevant materials for which period petitioner had engaged services of labourers so as to contend that EPF cannot be determined for entire period. Therefore, the contention of the petitioner that he remained ex parte and further it is a seasonal work etc. Even assuming that if the petitioner's business is relating to seasonal work, it is the bounden duty of the petitioner to place necessary record in the 7-A proceedings as well as before the appellate authority. In the absence of the same and having regard to the fact that petitioner has failed to co-operate in deciding 7-A proceedings, petitioner has not made out a case so as to interfere with the impugned orders.

Accordingly, petition stands dismissed.

At this stage, learned counsel for the petitioner is trying to argue the matter on merits to the extent that the petitioner has not engaged the labourers on regular basis. It is only on seasonal basis. In view of the judgment rendered by this Court in CWP No.17366 of 1998; decided on 27.10.2016; M/s Capital Dyeing Company v. The Regional Provident Fund Commissioner, petitioner's contention cannot be accepted. Moreover, the petitioner has not availed the opportunity before the 7-A authority despite issuance of bailable warrants. Having regard to the conduct of the

petitioner, petitioner is not entitled for any relief. Accordingly, contentions on merit of the case of the petitioner is hereby rejected.

20.09.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No