

CWP No.1355 of 2017 (O&M)

Date of decision: 13.02.2017.

Central Board of Trustees through Assistant Provident Fund Commissioner.

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...Petitioner.

Vs.

M/s Sant Nishchal Singh Public School

... Respondent.

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr.Rajesh Hooda, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

This petition has been filed against the remand order dated 22.07.2016 (Annexure P-4) passed by the Employees Provident Fund Appellate Tribunal, New Delhi. The case has been remitted to the Assistant Provident Fund Commissioner, Karnal, to again take up the proceedings under Section 7-A of the Employees' Provident Fund and Misc. Provisions Act, 1952 and to pass a fresh order.

Mr. Hooda, Advocate appearing for the organization submits that there is a direction in the remand order to assess the actual wages drawn by the employees as per law. The petitioner-organization is aggrieved by this direction as it may curtail the scope of proceedings since the custody of the records lies with the respondent-establishment which the party would need to produce.

Mr. Hooda submits that during the earlier proceedings under Section 7(A) before the Assistant Provident Fund Commissioner (APFC), Karnal, the respondent had prolonged the proceedings by not producing the attendance and payment records of the employees, but subsequently had filed an affidavit in the review petition that the record was lost. Therefore, Mr. Hooda

submits that if the directions holds regarding assessment on actual wages as directed by the appellate authority, it could lead to a grave miscarriage of justice to the subscribers. He further submits that when the case is being remanded to the APFC then normally the remand should not be straight jacketed by placing restrictions and compelling the authorities to decide in a particular manner and remand should be open ended to decide the case in accordance with law.

APFC to consider all the issues afresh after inviting comments and evidence from the respondent-establishment and the employees, if they wish, by putting them to notice and afford a reasonable opportunity to the management of effective/personal hearing.

Accordingly, a fresh decision be taken on the materials relied upon by the respondent-establishment and those in possession of the department /organization and pass a reasoned order covering each issue raised by the Management in its support.

With these observations, the petition is disposed of.

Copy of the order be sent to the respondent-establishment by Mr. Hooda. APFC will complete the task within a reasonable time.

(RAJIV NARAIN RAINA)
JUDGE

February 13, 2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*