IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6516-2011 (O&M)
Date of Decision:-10.10.2017.

The Punjab State Cooperative Supply & Marketing Federation Ltd.

.....Petitioner

Versus

Employees Provident Fund Appellate Tribunal and others

......Respondents

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

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Present: Mr. Rajesh Garg, Senior Advocate with
Mr. Virender Soni, Advocate for the petitioner.

Mr. Sanjay Tangri, Advocate for respondent Nos.2 & 3.

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P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has prayed for the following relief:-

> *"ii) issuance of an appropriate Writ in the nature of certiorari for quashing and setting aside the order passed by the Assistant Provident Fund Commissioner Bathinda dated 24.6.1998, Annexure P/3 claiming a sum of Rs.76,52,694/- and the order dated 8.12.1998, Annexure P/6 on account of provident fund contribution from the petitioner for the period July 1984 to August 1994 as well as order passed in appeal by the Appellate Tribunal, Annexure P/8 dated 16.11.2010."*

The petitioner is a Cooperative Society called the Punjab State Cooperative Supply & Marketing Federation Limited (for short

'MARKFED') are engaged into transaction of procurement of food stocks. In that connection, the petitioner were engaging labourers through contractors like respondent Nos.4 to 7. Respondent Nos.4 to 7 were held to be *ex parte* and order dated 24.9.2015 was passed by this Court. For the assessment period from July, 1984 to August, 1994, the contractors were bound to pay Provident Fund on behalf of the employees. If the contractors failed to remit in that event, the principal employer – the petitioner is liable to pay. In this regard, necessary proceedings have been drawn by the EPF Department on 24.6.1998 under Section 7-A of the EPF Act, 1952 (Annexure P-3). The petitioners remained *ex parte.* Consequently, the Assistant Provident Fund Commissioner proceeded to determine the dues and pass order. Feeling aggrieved by the 7-A proceedings order, petitioner preferred an appeal before the Employees Provident Fund Appellate Tribunal, New Delhi (for short 'the EPFAT'). The EPFAT dismissed the petitioner's appeal on 16.11.2010 (Annexure P-8). Hence, the present petition.

Learned counsel for the petitioner submitted that EPF amount on behalf of the employees is required to be remitted in the EPF Department by the contractors like respondent Nos.4 to 7. Since the contractors-respondent Nos.4 to 7 engaged the services of the employees, therefore, the petitioners are not liable to pay. It was further submitted that the assessment or determination of EPF amount for the period from July, 1984 to August, 1994 is contrary to the circular issued on 17/22.4.1997 (Annexure P-2) wherein it is held that para 26 of the EPF scheme would be effective from 1.11.1990. Therefore, the 7-A proceedings assessment for the period from July, 1984 to August, 1994 is contrary to Annexure P-2. At the best, petitioner is liable to pay EPF for the period from 1.11.1990 to August, 1994. To that extent, the 7-A proceedings are liable to be set aside. Consequently, the EPFAT order dated 16.11.2010 is also liable to be set aside.

Per contra learned counsel for the respondent Nos.2 and 3 submitted that petitioner remained *ex parte* in the 7-A proceedings despite giving number of opportunities. Moreover, during pendency of this litigation, the order of 7-A proceedings has been implemented which is evident from para 7 of the written statement filed on behalf of respondent Nos.2 and 3 even to the extent of disbursing the Provident Fund to the respective employees. In view of these facts and circumstances and having regard to the conduct of the petitioner in not participating in 7-A proceedings, petitioner has not made out a case so as to interfere with the 7-A proceedings as well as Appellate Authority's order.

Heard learned counsel for the parties.

Undisputedly, respondent Nos.4 to 7 are contractors who have lent labourers to the petitioner. No doubt the contractors are liable to pay EPF of the labourers. In case if the contractors fail to pay EPF contribution in that event, principal employer that is the petitioner is liable to pay in terms of statutory provisions and decisions of the Supreme Court. In this regard, the 7-A proceedings were drawn in which the petitioner has failed to appear and assist in submission of records as is evident from the 7-A proceedings. More than a dozen times, petitioner had been granted opportunity to assist in the 7-A proceedings. The same has not been utilized. Consequently, an *ex parte* proceedings was held against the petitioner. Further during pendency of this petition, the petitioner has remitted the determined amount under the 7-A proceedings and it was disbursed to the respective employees. In view of these later development, question of re-considering the determination of EPF amount to the extent from 01.11.1990 to August, 1994 do not arise. Petitioner has not made out a case.

Accordingly, petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

October 10, 2017.
sandeep

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.