In the High Court of Punjab and Haryana at Chandigarh

CWP No. 22198 of 2015
Date of Decision: August 21, 2017

Onkar Singh Lalit Kumar, Brick Kiln (now closed) partnership firm through Lalit Kumar Seth.

... Petitioner

Versus

Provident Fund Commissioner-II, Chandigarh and others

... Respondents

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

Present: Mr. Ranjit Saini, Advocate,
for the petitioner.

Mr. Sanjay Tangri, Advocate,
for respondents no.1 and 3.

P.B. Bajanthri, J. ***(Oral)***

1. In the instant writ petition, petitioner has assailed orders dated 11.08.1997 and 04.09.1997 (Annexures P/8 and P/9 respectively).

2. Petitioner is operating M/s Brick kiln, which are into brick manufacturing. Respondents have issued notice on 12.02.1997 to the petitioner for the purpose of assessment of Provident Fund dues for the period from 1/95 to 1/96 under Section 7-A of the Employees, Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act, 1952"). Date and time was fixed as 28.02.1997 at 11.00 A.M. Learned counsel for the petitioner submitted that on the instructions of an official of the respondents by name one Sh. A.S. Noor, petitioner had deposited a sum of Rs.22,000/-. Petitioner never participated in the process of proceedings conducted under Section 7-A of Act, 1952, whereas respondents have

proceeded to determine the Provident Fund on 11.08.1997. Thereafter, on 04.09.1997 revised order has been passed while deducting certain amounts. Petitioner is stated to have not aware of the assessment order, as well as, revised order. It was noticed by the petitioner only in the year 2011. Consequently, petitioner filed an appeal before the appellate authority. The appellate authority rejected petitioner's appeal on 01.03.2011. Feeling aggrieved by the appellate authority's order, petitioner preferred a writ petition before this Court. This Court disposed of petitioner's writ petition i.e. CWP No. 5957 of 2011 on 06.04.2015 remanding the matter to the appellate authority for deciding the matter afresh. Thus, the appellate authority passed a fresh order on 04.09.2015 (Annexure P/14). Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that before 7-A proceedings, petitioner has not been heard. No notice was given to the petitioner for appearance. It was further submitted that wages of Labourers cannot be considered for the entire period as they were into manufacturer of bricks and it is a seasonal work. In support of this, he relied on documents (Annexure P/15) to show that petitioner company was running during the period from 01.04.1994 to 04.07.1994, 19.11.1994 to 17.01.1995, 01.04.1995 to 10.07.1995 and 01.12.1995 to 09.01.1996. Thus, in a year, labourers were discharging work for few months. To that extent, determination of Provident Fund for the whole year is contrary to the factual aspect.

4. Per contra, learned counsel for the respondents vehemently contended that perusal of Annexure P/1 dated 12.02.1997 it is evident that notice has been issued to the petitioner to appear on 28.02.1997 at 11.00

A.M. to attend enquiry under Section 7-A of Act, 1952. It was also pointed out by the respondents' counsel that in the petitioner's appeal, petitioner has himself admitted the fact that there would be determination of Provident Fund on 28.02.1997, therefore, sufficient opportunities have been granted to the petitioner. It is also evident from proceedings under Section 7-A of Act, 1952 in para no.3, number of dates were given which shows that ample opportunity has been granted to the petitioner. Further, counsel for the respondents submitted that no public document has been produced to show that labourers were worked only few months in a year, what has been relied on self serving document (Annexure P/15) where the dates have been given. Therefore, petitioner has not made out a case so as to interfere with appellate authority as well as assessment and revised orders dated 11.08.1997 and 04.09.1997 read with order dated 04.09.2015 (Annexure P/14).

5. Heard learned counsel for the parties.

6. Perusal of the record it is evident that respondents have issued show cause notice before proceedings under Section 7-A of Act, 1952 were conducted. It is also evident from memorandum of appeal filed by the petitioner to the extent that date was fixed for determination of Provident Fund as 28.02.1997. Merely on the instructions of one Sh. A.S. Noor, an official of the respondents under whose directions, petitioner is stated to have deposited a sum of Rs. 22,000/, that does not over come the proceedings under Section 7-A of Act, 1952 conducted by the respondents with reference to order dated 11.08.1997. Petitioner was manufacturer of bricks. No doubt it is a seasonal work and with reference to Annexure P/15 it is evident that petitioner has not worked for few months in a year. Said

issue is required to be re-examined by the respondents while determining the Provident Fund for the assessment year from January 1995 to January 1996.

7. In view of above facts and circumstances, appellate authority's order as well as assessment and revised orders are set aside. Matter is remanded to the Assessing Authority under Section 7-A of the Act, 1952. Petitioner is hereby directed to appear before the Assessing Authority on 27.09.2017 by producing necessary material to show that petitioner was manufacturer of bricks and they have worked only for few months in a year. Necessary material be placed before the Assessing Authority. The Assessing Authority may re-determine the Provident Fund the period from January 1995 to January 1996. If no document is produced, in that event, the Assessing Authority is at liberty to determine for entire 12 months in a year. The Assessing Authority is hereby directed to pass a fresh order of re-determining the Provident Fund before 01.12.2017. The petitioner is stated to have deposited a sum of Rs.1,17,048/- on 17.12.2015 by virtue of this Court's order. The Registry of this Court is hereby directed to release the said amount in favour of the respondent – Provident Fund Department. The Provident Fund Department is hereby directed to adjust the said amount in the arrears and interest, if any, after re-determination as per the above order.

8. With the above observations, instant writ petition stands disposed of.

August 21, 2017 **[P.B. Bajanthri]**
vkd **Judge**

Whether speaking / reasoned : Yes
Whether reportable : No