

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

CWP No.5067 of 2014 (O&M)

Date of Decision:25.09.2017

Jatinder Singh

... Petitioner

Vs.

Union of India and others

... Respondents

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

Present : Mr. Vikram Bali, Advocate for the petitioner.

Mr. Vinod Sharma, Advocate and
Mr. Satish Singla, Advocate for respondents No.1 and 2.

Mr. Sumeet Goel, Advocate and
Mr. Manav Bajaj, Advocate for respondents No.3 and 4.

P.B. BAJANTHRI J. (Oral)

C.M. No.12823 of 2010

The application is allowed as prayed for. Additional facts supported by affidavit is taken on record subject to all just exceptions.

Main case

With the consent of parties, main matter is heard.

In the instant petition, petitioner has challenged the validity of the orders dated 5.6.2007, 13.12.2007, 30.8.2011 and 5.12.2013 (Annexures P-1, P-2, P-4 and P-5 respectively).

Petitioner is into the brick business. It is the proprietorship firm. Firm's name is called as Jatinder brick Traders. Petitioner's proprietorship firm falls under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short "1952 Act"). The respondent-department inspected the premises of the petitioner's firm on 14.6.2001 and

found that 33 workers were working. In this background, EPF department of the view that the petitioner has failed to pay provident fund towards his workers from December 1997 to April 2001. Thus, proceedings were drawn under Section 7-A of the 1952 Act. Despite issuing notice for appearance and assisting in determining the EPF amount, the petitioner or his representative failed to appear. Consequently, proceedings were drawn under Section 7-A of the 1952 Act while determining the amount to the extent of Rs.276173/-. Petitioner being aggrieved by the proceedings under Section 7-A of the 1952 Act preferred review application under Section 7-B of the 1952 Act and it was rejected on 13.12.2007. Further petitioner invoked appeal provision and filed an appeal before the appellate authority which was dismissed on 30.8.2001. Further review was filed. Review was also rejected on 5.12.2013. Hence, the present petition.

Learned counsel for the petitioner vehemently submitted that petitioner's proprietorship firm M/s Jatinder Brick Traders has been closed since 1996-97. To that effect, petitioner produced communication between the petitioner and the District Food and Supplies Controller in which it was certified by the authorities that petitioner's firm was closed since 1996-97 and licence of brick kiln was not renewed. In view of the closure, question of determining EPF amount by the EPF department for the period from 1997 to 2001 do not arise. Therefore, proceedings initiated by the EPF department are liable to be set aside.

Per contra, learned counsel for the respondents while resisting the petitioner's claim specifically pointed out that on 14.6.2001, respondent-EPF department inspected the firm premises of the petitioner and found that 33 workers were working. To that extent, list has been drawn and the same

has been attested by Munshi of the petitioner. Therefore, petitioner's contention that petitioner's firm was not working since 1996-97 as contended by him is utter false. Further no such document has been produced other than the certificate issued by the District Food and Supplies Controller. It was submitted that as on 14.6.2001 when the premises of the petitioner was inspected, it was found that 33 workers were working. Therefore, it is evident that petitioner's firm was working as on 14.6.2001.

Heard learned counsel for the parties.

Petitioner's contention that he has not been heard in the proceedings under Section 7-A of the 1952 Act, therefore, matter is required to be remanded to the competent authority for the purpose of re-considering the determination of provident fund. It was submitted that he has necessary material to show that petitioner's firm was closed since 1996-97. Therefore, question of determining provident fund do not arise. Since the petitioner has not been heard while drawing proceedings under Section 7-A of the 1952 Act, therefore, orders dated 5.6.2007, 13.12.2007, 30.8.2011 and 5.12.2013 (Annexures P-1, P-2, P-4 and P-5 respectively) are hereby set aside, subject to deposit determined EPF amount to the extent of Rs.276173/- by the petitioner. The petitioner is hereby directed to deposit the said amount within a period of two months from today. Further competent authority is hereby directed to re-determine the provident fund with reference to the document which would be made available by the petitioner and giving an opportunity to the petitioner. The petitioner is hereby directed to co-operate in deciding proceedings under Section 7-A of the 1952 Act afresh. Proceedings under Section 7-A of the 1952 Act shall be re-drawn within a period of three months from receipt of this order. In the fresh proceedings

under Section 7-A of the 1952 Act, if the department arrived at any different amount or the petitioner is not liable to pay provident fund, in that event, amount which has been deposited by the petitioner shall be adjusted by either of the parties. Such adjustment shall be completed within a period of two months from the date of re-determining EPF by the department.

With the above observation, petition stands disposed of.

25.09.2017
rajeev

(P.B. Bajanthri)
Judge

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