

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

LPA No.1307 of 2016 (O&M)

Date of Decision : 20.01.2017

Food Corporation of India

....Appellant

Versus

The Presiding Officer and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN

....

Present: Mr. Manav Bajaj, Advocate for
Mr. Sumeet Goel, Advocate
for the appellant.

....

MAHESH GROVER, J. (Oral)

The appellant faced proceedings under Sections 7Q and 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act') for having delayed the payments on account of the provident fund admissible to its employees in terms of the provisions of the statute. Against the order passed by the Provident Fund Commissioner an appeal was preferred which was dismissed followed by a writ petition which too met the same fate.

While impugning the judgment of the learned Single Judge learned counsel for the appellant contended that the amounts due already stood paid but this fact was ignored by the Provident Fund Authorities while concluding against the

appellant. It is contended that once the amounts stood deposited, such period necessarily has to be excluded for the purpose of determining the liability.

We notice from the impugned order as also the order of the Appellate Authority that the appellant failed to produce any material before the said authorities to establish the fact of payment in time. It was on account of the delayed payment that appellant has been fastened with the penal liability. Even before us no such document or material has been produced by the appellant to substantiate such a plea. It is thus difficult to accept what has been projected before us considering that the appellant is an establishment where it would account for each and every payment made and thus it is inconceivable that the appellant would not be having the necessary record of payment to satisfy the queries of the authorities under the Act. In the absence of any such material, we are unable to accept the plea of the appellant.

Contention has also been raised that the employees were engaged through the contractor and it was incumbent upon the authorities under the Act to summon the contractor and establish the liability.

A perusal of Section 8A of the Act, which has been extracted herebelow, would indicate that it is the employer's responsibility even if the workers have been engaged through a

contractor:-

“8A. Recovery of moneys by employers and contractors.--(1)

The amount of contribution (that is to say, the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme) and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

(2) A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him, may recover from such employee the employee's contribution under any Scheme by deduction from the basic wages, dearness allowance and retaining allowance if any payable to such employee.

(3) Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (1) from the basic wages, dearness allowance, and retaining allowance if any payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

Explanation. – In this section, the expressions “dearness allowance” and “retaining allowance” shall have the same meanings as in section 6.”

Having failed to discharge its onus and the responsibility cast under the Act we would find no reason to

interfere with the findings recorded by the learned Single Judge.

Consequently, the appeal is dismissed.

(MAHESH GROVER)
JUDGE

20.01.2017
dss

(SHEKHER DHAWAN)
JUDGE

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