IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-2386-2016 (O&M)

Date of decision: 24.04.2017

M/s Capital Dyeing Company

..... Appellant

Versus

The Regional Provident Fund Commissioner

..... Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Pawan Kumar Mutneja, Advocate for the appellant.

Mr. Rajesh Hooda, Advocate for the respondent.

RAMENDRA JAIN, J.

CM-4966-2016

Photocopy of Inspection Report (Annexure A-1) filed along with the application is taken on record, subject to all just exceptions.

CM stands disposed of.

LPA-2386-2016

1. The instant Letters Patent Appeal has been filed by the appellant-Company through its proprietor namely Suresh Kumar Guliani, under Clause X of the Letters Patent, for setting aside the judgment dated 27.10.2016 passed by the learned Single Judge in CWP-17366-1998.

2. Briefly stated, on 06.12.1996 the factory of the appellant-Company was inspected by the Enforcement Officer of the EPF Department under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'EPF Act') and found that there were 21 employees working in the factory. On 31.07.1997, the appellant-Company took the stand that at any point of time it had not engaged more than 19 employees, therefore, the provisions of EPF Act were not applicable to its factory. The appellant-Company also requested for personal hearing, in case, any further action was to be taken by the respondent. On receipt of the aforesaid objection by way of reply of the appellant-Company, the EPF Department vide letter dated 23.09.1997 (Annexure A-1) submitted inspection report dated 06.12.1996 along with Coverage Form and list of employees reiterating that the appellant-Company was covered by the EPF Act and asked the appellant-Company to comply with the provisions of the EPF Act. On account of non-compliance of the provisions of the EPF Act, the Enforcement Officer reported to the respondent-Regional Provident Fund Commissioner, Ludhiana, to initiate proceedings against the appellant-Company for non-compliance of the provisions of EPF Act. When the appellant did not comply with the provisions of EPF Act, a notice was issued to the appellant-Company for drawing the proceedings under Section 7-A of the EPF Act on 23.01.1998. The appellant-Company had submitted written submissions dated 23.01.1998 (Annexure P-2) before the respondent. Being not satisfied with the stand of the petitioner, the respondent initiated proceedings under Section 7-A of the EPF Act vide order dated 30.04.1998 (Annexure P-3)

holding that the EPF Act was applicable to the appellant's establishment and consequently, it was statutorily bound to make compliance within 30 days of the receipt of the order. Feeling aggrieved against the order Annexure P-3 passed by the respondent, the appellant preferred an appeal before the Employees Provident Fund Appellate Tribunal, New Delhi, which was dismissed vide order dated 23.09.1998 (Annexure P-4). Being further aggrieved, the appellant-Company filed CWP-17366-1998 which too was dismissed vide the impugned judgment dated 27.10.2016, passed by the learned Single Judge.

3. Learned counsel for the appellant contended that the learned Single Judge has failed to consider the relevant documents i.e. attendance and wages registers, balance-sheet, profit and loss account as well as ESI record which was quite relevant for effective adjudication. The respondent as well as the Appellate Tribunal also did not consider the above documents, though available on the record, while deciding the case of the appellant-Company under Sections 7-A and 7-I of the EPF Act. The authorities below illegally and arbitrarily did not consider the legitimate stand of the appellant-Company and rejected its claim with closed mind. He further contended that in fact on the date of alleged inspection i.e. on 06.12.1996, physically only 7 employees were found working in the factory of the appellant-Company, but the inspection team illegally and arbitrarily in order to cause loss to the appellant-Company prepared a list of 21 employees appended with inspection report Annexure A-1 without mentioning the parentage of some of the persons; some of the persons were shown twice and some were not present at all. For example, Ram Avtar was

shown twice at serial Nos. 4 and 17 and similarly one Ram Bahadur was also shown twice at serial Nos. 13 and 20.

4. On the other hand, learned counsel for the respondent has strongly refuted the above submissions by submitting that since on the date of inspection, 21 employees were found working in the factory of appellant-Company, therefore, the appellant was rightly asked to adhere to the provisions of EPF Act. It was urged that the impugned judgment passed by the learned Single Judge as well as the orders passed by the authorities below are legal.

5. We have given our thoughtful consideration to the submissions made by learned counsel for the parties and perused the record.

6. The core issue to be decided in the instant appeal is whether the appellant-Company is covered under the provisions of EPF Act. Section 1 (3) (b) of the EPF Act envisages that a firm or factory must have more than 20 persons so as to attract EPF Act. Section 1 (3) (b) of the EPF Act reads as under:-

> "1. Short title, extent and application.- (1) This Act may be called the Employees" Provident Funds and Miscellaneous Provisions Act, 1952.
>
> XXX XXX XXX
>
> (3) Subject to the provisions contained in section 16, it applies -
>
> XXX XXX XXX
>
> (b) to any other establishment employing twenty or more persons or class of such establishments which the Central

Government may, by notification in the Official Gazette, specify, in this behalf:

Provided that the Central Government may, after giving not less than two months" notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

XXX XXX XXX"

7. Undisputedly, at the time of inspection on 06.12.1996, the proprietor of the appellant-Company namely Suresh Kumar Guliani was not present, but the signatures of his son Nitin Kumar Guliani who was present at that point of time were obtained on the list of employees appended with the inspection report Annexure A-1. The son of Suresh Kumar Guliani was not incharge of the affairs of the firm and he could not have been treated as employer by the respondent. For ready reference, definition in Section 2 (e), (f), (k) and Section 13 of the EPF are reproduced as under:-

"2. Definitions. - In this Act, unless the context otherwise requires, -

XXX XXX XXX

(e) "employer" means- (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause f of sub-section 1 of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person,- (i) employed by or through a contractor in or in connection with the work of the establishment; (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment;

(ff) "exempted employee" means an employee to whom a Scheme or the Insurance Scheme, as the case may be, would, but for the exemption granted under section 17, have applied;

(fff) "exempted establishment" means an establishment in respect of which an exemption has been granted under section 17 from the operation of all or any of the provisions of any Scheme or the Insurance Scheme, as the case may be, whether such exemption has been granted to the establishment as such or to any person or class of persons employed therein;

XXX XXX XXX

(k) "occupier of a factory" means the person, who has ultimate control over the affairs of the factory, and, where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory;

XXX XXX XXX

13. Inspectors. (1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act, the Scheme, the Pension Scheme or the Insurance Scheme and may define their jurisdiction. (2) Any Inspector appointed under sub-section 1 may, for the purpose of inquiring into the correctness of any information furnished in connection with this Act or with any Scheme or the Insurance Scheme or for the purpose

of ascertaining whether any of the provisions of this Act or of any Scheme or the Insurance Scheme have been complied with in respect of an establishment to which any Scheme or the Insurance Scheme applies or for the purpose of ascertaining whether the provisions of this Act or any Scheme or the Insurance Scheme are applicable to any establishment to which the Scheme or the Insurance Scheme has not been applied or for the purpose of determining whether the conditions subject to which exemption was granted under section 17 are being complied with by the employer in relation to an exempted establishment.

(a) require an employer or any contractor from whom any amount is recoverable under section 8A to furnish such information as he may consider necessary.

(b) At any reasonable time and with such assistance, if any, as he may think fit, enter and search any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment;

(c) Examine, with respect to any matter relevant to any of the purposes aforesaid, the employer or any contractor from whom any amount is recoverable under section 8A, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or whom the Inspector has reasonable cause to believe to be or to have been, an employee in the establishment;

(d) Make copies of, take extracts from, any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence;

(e) Exercise such other powers as the Scheme or the insurance scheme may provide. (2A) Any Inspector appointed under sub-section 1 may, for the purpose of inquiring into the correctness of any information furnished in connection with the Pension Scheme or for the purpose of ascertaining whether any of the provisions of this Act or of the Pension Scheme have been complied with in respect of an establishment to which the Pension Scheme applies, exercise all or any of the powers conferred on him under clause a, b, clause c, or clause d of sub-section 2.

(2B) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898) shall, so far as may be, apply to any search or seizure under sub section 2 or under sub-section 2A, as the case may be, as they apply to any search or seizure made under the authority of a warrant issued under Section 98 of the said Code."

8. According to the stand of the appellant-Company, Sarv Shri Sidh Nath Yadav and Chota Lal shown at serial Nos. 3 and 5, respectively were not present on the date of alleged inspection. Similarly, Ram Avtar and Ram Bahadur were shown twice at serial Nos. 4 & 17 and 13 & 20 respectively, in the list of employees appended with inspection report Annexure A-1. One Sumit shown at serial No. 10 of the aforesaid list had submitted his duly sworn affidavit that he was working in the adjoining factory, but the same was not considered. Sat Parkash, shown at serial No. 16 of the list (on the alleged date of inspection) was admitted in the hospital and died thereafter, on 20.12.1996. The appellant-Company had taken the abovestated stand before the respondent as well as the Appellate Tribunal and also before the learned Single Judge, through its proprietor-Suresh Kumar Guliani, by way of duly sworn affidavit. Suresh Kumar Guliani, had also testified before the respondent that signatures of the aforesaid 21 persons were obtained forcibly on a blank paper. Perusal of the order Annexure P-3, shows that the respondent negated all the above aforesaid

pleas of the appellant-Company without any lawful reasoning or otherwise in a cryptic way despite the fact that the appellant-Company had produced the entire record i.e. attendance and wages register etc. In the payment of salary/wages register (wrongly marked as Annexure A-1) the father's name of Ram Avtar had been shown as Mam Chand and there is no other Ram Avtar. The inspection team wrote his name twice without mentioning the parentage of both Ram Avtar. Hence, it was incumbent upon the respondent to verify that both Ram Avtar mentioned at serial Nos. 4 and 17 were distinct persons having different parentage. However, the respondent instead of going deep into the stand taken by the appellant-Company, hushed up the matter with the cryptic findings by simply mentioning that since the inspection team had shown two persons namely Ram Avtar-I and Ram Avtar-II at serial Nos. 4 and 17 of the list appended with inspection report Annexure A-1, therefore, there were two persons. The above reasoning given by the respondent is clearly baseless and illegal. Similarly, qua Ram Bahadur whose name was also shown twice at serial Nos. 13 and 20 of the aforesaid list, the respondent negated the stand of the petitioner that aforesaid Ram Bahadur was one and the same person by observing that one Ram Badhur was Chowkidar and the another was a worker. Again the respondent did not try to find out the fathers' names of both Ram Bahadur though in the payment of salary and wages register the father's name of Ram Bahadur was mentioned as Sher Bahadur. The respondent had no evidence before him nor he tried to collect any such evidence to prove that there were two Ram Avtar and Ram Bahadur working in the factory of the appellant-Company having distinct fathers' name.

9. Similarly, one Sumit shown at serial No. 10 as worker of the appellant-Company had filed his duly sworn affidavit to the effect that he was working in the adjoining factory. His statement as well as the affidavit were ignored by the respondent illegally by simply observing that his statement was not admissible. Sat Parkash shown at serial No. 16 of the aforesaid list was hospitalized since 05.12.1996 i.e. preceding day of the alleged inspection and he died in the hospital itself on 20.12.1996. The respondent only considered the stand of the appellant-Company qua Sat Parkash aforesaid that he was hospitalized on the date of inspection and died on 20.12.1996, but did not give any reasoning qua Sidh Nath Yadav and Chota Lal shown at serial Nos. 3 and 5, respectively of the aforesaid list. According to the appellant-Company, they both had left their employment under the appellant-Company in the month of May, 1996. Chota Lal aforesaid had worked only for two months i.e. in the months of April and May, 1996, whereas Sidh Nath Yadav had only worked upto 31.05.1996 and both were not present at the time of inspection and their names were picked up from the attendance registers of the relevant months. From the above discussion, it is evident on the record that the order dated 30.04.1998 (Annexure P-3) cannot be sustained and, thus, is liable to be set aside.

10. The Appellate Tribunal also did not consider the stand of the appellant-Company and dismissed its appeal vide order Annexure P-4, on the ground that since the list of employees appended with the inspection report Annexure A-1 was signed by Mr. Nitin Guliani S/o Suresh Kumar Guliani proprietor of the appellant-Company, therefore, the presumption of

correctness was attached to it. There was no justification for the Appellate Tribunal to dismiss the appeal of the appellant-Company on such a cryptic ground. The Appellate Tribunal was required to examine the controversy involved in the appeal in full detail and then decided the same by passing a speaking order.

11. The respondent or the Appellate Tribunal also did not discuss the stand of the appellant-Company that signatures of Nitin Guliani son of Suresh Kumar Guliani, proprietor of the appellant-Company were obtained on some blank paper and thus, the orders dated 30.04.1998 and 23.09.1998 (Annexures P-3 and P-4, respectively) passed by the authorities below are non-speaking from this angle too. The learned Single Judge, dismissed the writ petition filed by the appellant-Company on the ground that the stand taken by the appellant was an after thought as the inspection of the appellant's factory was made on 06.12.1996 but, the appellant did not raise any objection before the EPF Department about the said inspection within reasonable time. The appellant-Company raised all the aforesaid pleas before the EPF Department only against the issuance of show-cause notice after a lapse of 6-7 months that signatures of Nitin Guliani son of Suresh Kumar Guliani-proprietor of appellant-Company were obtained by coercion or on some blank papers. There was no occasion for the appellant-Company to raise any objection unless and until without coming to know of the inspection report or the record on the basis of which inspection team had shown 21 workers in the appellant's factory and, therefore, the finding of the learned Single Judge to the contrary is against the record and thus untenable. The observations of the learned Single Judge that the EPF

Department had rightly rejected the attendance register and annual returns-balance sheet of the appellant-Company being not countersigned by any authority is equally not tenable, the appellant-Company can get the signatures of the EPF Inspector or any other authority as and when they visit their premises. The appellant-Company had claimed that it had been complying with all the statutory requirements laid down under law. In the instant case, the appellant had *prima facie* shown by producing the relevant record in support of its stand that there were only 7 employees working with it on the date of inspection and, in such a situation it would have been appropriate that the learned Single Judge, had remanded the case to the respondent in the light of the above facts.

12. In view of the discussions made above, the impugned judgment dated 27.10.2016 passed by the learned Single Judge as well as the orders dated 30.04.1998 and 23.09.1998 (Annexures P-3 and P-4, respectively) passed by the authorities below are hereby set aside and the case is remanded to the Regional Provident Fund Commissioner-respondent to decide the same afresh after considering the evidence brought on record by the appellant-Company. The instant Letters Patent Appeal stands disposed of, accordingly. It is clarified that anything observed hereinbefore shall not be taken to be an expression on the merits of the controversy.

(RAMENDRA JAIN)
JUDGE

April 24, 2017 **(AJAY KUMAR MITTAL)**
rishu **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No