

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10952 of 2011

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Regional Provident Fund Commissioner, Sub Regional Office, Employees'
Provident Fund Organization, Adampur, Bhagalpur through Shri B.N.Chaudhary,
Asstt. P.F. Commissioner, Patna

.... Petitioner/s

Versus

1. M/S B.P.Trading, Adampur Chauk, At & P.O.-Bhagalpur through its proprietor
Shri Brahmdo Panjiyar, resident of Charu Chandra Mukherjee Road, At and
P.O.-(G.P.O.), Bhagalpur, District- Bhagalpur
2. Sri Jagdish Prasad Sah, son of Late Bhuneshwar Prasad Sah, Village-
Madnurchauk, Nirjanhat, Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Kumar Verma, Sr. Advocate

For the Respondent/s : Mr. M.P. Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 13-09-2018

Heard Mr. P. K. Verma, learned Senior Advocate for the
petitioner and Mr. M. P. Srivastava, learned Advocate appearing for
respondent no.1.

2. Earlier notices were issued to the respondents in the
admission matter. Respondent no.1 has already appeared through Mr.
M.P. Srivastava, learned Advocate. It would be manifest from the
record that respondent no.2 had already died and notices issued to
respondent no. 2 were received by his son. The son or legal
representative of respondent no.2 has not been substituted till date.



3. The writ petition was filed in the year 2011 for quashing the order of EPF Appellate Tribunal (for short 'the Tribunal') dated 15.07.2010 passed in ATA No. 689(3) of 2002 whereby the order of the Assistant Provident Fund Commissioner, Bhagalpur dated 29.08.2002 effecting EPF coverage to the employees of the respondent no.1 with effect from 01.03.1989 had been set aside.

4. A preliminary objection has been raised by the learned counsel appearing for the respondent no.1 regarding maintainability of the writ petition. He submitted that the Regional Provident Fund Commissioner could not have filed the present writ application in his personal capacity. He has drawn my attention towards Section 5-A and Section 5-C of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act') in this regard. He contended that only Board of Trustees constituted under Section 5-A or Section 5-B has the authority to file a writ petition challenging the order passed by the Tribunal.

5. Per contra, Mr. P.K. Verma, learned senior counsel appearing for the petitioner submitted that the Regional Provident Fund Commissioner being the senior-most officer of the region is the competent authority to file writ petition challenging the order of the Tribunal. He submitted that the Regional Provident Fund Commissioner has been delegated with the power to file a writ



petition before this Court under the Act.

6. I have heard learned counsel for the parties and perused the record.

7. Section 5-A(1) of the Act reads as under:-

“5-A. Central Board.- (1) The Central Government may, by notification in the Official Gazette, constitute with effect from such date as may be specified therein, A Board of Trustees for the territories to which this Act extends (hereinafter in this Act referred to as the Central Board) consisting of the following persons as members, namely:-

(a) a Chairman and a Vice Chairman to be appointed by the Central Government;

(aa) the Central Provident Fund Commissioner, ex officio;

(b) not more than five persons appointed by the Central Government from amongst its officials;

(c) not more than fifteen persons representing Governments of such States as the Central Government may specify in this behalf, appointed by the Central Government;

(d) ten persons representing employers of the establishment to which the Scheme applies, appointed by the Central



Government after consultation with such organizations of employers as may be recognized by the Central Government in this behalf; and

(e) ten persons representing employees in the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organizations of employees as may be recognized by the Central Government in this behalf.”

8. Section 5-C of the Act reads as under:-

“5-C. Board of Trustees to be body corporate.- Every Board of Trustees constituted under Section 5-A or 5-B shall be a body corporate under the name specified in the notification constituting it, having perpetual succession and a common seal and shall by the said name sue and be sued.”(emphasis mine)

9. From a reading of the aforesaid provisions of the Act, it would be evident that the Central Government is empowered to constitute a Board of Trustees in the manner provided under the scheme by notification in the official Gazette which shall be a body corporate having perpetual succession and a common seal and shall by the said name sue and be sued. Thus, even if any officer is



empowered or delegated to file an application before any court, the application has to be filed in the name of the Board of Trustees and not in the personal capacity of an officer. The Regional Provident Fund Commissioner, who has filed this writ petition is an authority under the Act whose order may be assailed before the Tribunal in appeal. He cannot be allowed to question the decision of his appellate authority. He was not a contesting party before the Tribunal. The order under Section 7-A of the Act in the instant case was passed by the Assistant Provident Fund Commissioner, which was challenged before the Tribunal. Like him, the Regional Provident Fund Commissioner is also an authority under the Act, who is empowered to exercise powers under Section 7-A of the Act. An order under Section 7-A of the Act is passed while exercising a quasi judicial function. A quasi judicial authority cannot assail the order of his appellate authority by way of filing a writ petition.

10. Moreover, there is nothing stated in the writ petition that the petitioner has been delegated with any power to file a writ petition on behalf of the Central Board of Trustees.

11. In that view of the matter, in my opinion, the instant writ petition filed by the Regional Provident Fund Commissioner is completely misconceived. Accordingly, it is dismissed.

12. In case the Central Board of Trustees is aggrieved by



the order impugned passed by the Tribunal, it would be at liberty to
assail the same before this Court in accordance with law.

(Ashwani Kumar Singh, J)

Md.S./-Sanjeev

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.09.2018
Transmission Date	

