IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8924 of 2011

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Raj Kumar Gupta Son of Late Prabhu Kumar Gupta, resident of Mohalla - Maripur, P.S. Kazimohammadpur, District - Muzaffarpur

.... Petitioner

Versus

1. The Regional Provident Fund Commissioner, Employees Provident Fund Organization, Bhavishyanidhi Bhawan 'R' Block, Road No. 6, Bihar, Patna
2. The Assistant Provident Fund Commissioner, Sub-Regional Officer, Employee's Provident Fund Organization, District - Muzaffarpur
3. The Recovery Officer, Sub-Regional Office, Employee's Provident Fund Organization, District - Muzaffarpur
4. The Enforcement Officer, Sub-Regional Office, Employee's Provident Fund Organization, District - Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Krishna Kant Singh, Advocate

For the Respondent : Mr. Sarva Deo Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-08-2018

Heard learned counsel for the petitioner and learned counsel appearing for the respondents.

2. The instant writ petition has been filed by the petitioner for setting aside the order dated 03.02.2011 passed in ATA No. 14 (3) of 2009 by the Employees' Provident Fund Appellate Tribunal, New Delhi (for short 'Tribunal') whereby and whereunder the appeal of the appellant has been dismissed as well

for setting aside the assessment dated 31.10.2008/06.11.2018 by the Assistant Provident Fund Commissioner, Sub-Regional Office, Muzaffarpur (for short 'Assessing Authority') under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act of 1952') by which total dues amounting to Rs.2,99,465/- has been assessed besides interest of Rs.1,05,465/- under Section 7Q of the Act of 1952 and for setting aside the order dated 24.11.2008/28.11.2008 passed by the Assessing Authority whereby and whereunder the review application of the petitioner under Section 7B of the Act of 1952 for review of the order dated 31.10.2008/06.11.2008 was rejected by the Assessing Authority.

3. The present case is relating to the establishment M/s Old Bhagirath Hotel, Court Compound, Muzaffarpur (for short 'establishment'). It came under the purview of the Act of 1952 by the P.F. Authority bearing PF Account No. BR/6877. The assessment order under the Act of 1952 was passed in the instant case for the period commencing from August 2003 to December 2007.

4. Learned counsel for the petitioner submitted that in view of Section 7 A (2) of the Act of 1952, the Assessing Authority while conducting an inquiry under sub-section (1) was required to exercise all his powers to collect all evidences and materials before

coming to any conclusion, as while conducting inquiry, he was vested with the same powers, as are vested in a court under the Code of Civil Procedure, 1908 for trying a suit. He contended that in view of Section 7A(3) of the Act of 1952, no order could have been made under sub-section (1) without giving the petitioner a reasonable opportunity of representing his case.

5. He submitted that in the instant case, from perusal of the impugned order itself it would transpire that it is based on conjecture and surmises. The impugned order of the Assessing Authority dated 31.10.2008/06.11.2008 passed under Section 7A of the Act of 1952 is a non-speaking order, which has been passed without any enquiry conducted on hypothetical presumption and imaginary figures. He pleaded that the establishment had never employed 20 employees. Hence, the impugned order dated 31.10.2008/06.11.2008 was bad in law. The Tribunal also failed to appreciate that the Assessing Authority failed to exercise his jurisdiction vested in him while determining the amount and identifying the workman.

6. He further argued that identical orders were passed by the Assessing Authority under the Act of 1952 as well as the Tribunal in case of the petitioner for the period 1992-93 to 2000, which was challenged before this Court in CWJC No. 4061 of 2011

and, after considering the submissions made on behalf of the petitioner, this Court vide order dated 01.07.2013 allowed the writ petition and quashed the order passed under Section 7 A of the Act of 1952 by the Assessing Authority as well as the order passed by the Tribunal in appeal. The said order dated 01.07.2013 passed in CWJC No. 4061 of 2013 was challenged in intra-court appeal before this Court and the Division Bench vide order dated 18.09.2017 passed in Letters Patent Appeal No. 1263 of 2013 upheld the order passed by the learned single Judge and dismissed the appeal. It is contended that on similar grounds, the instant writ petition also deserves to be allowed.

7. Opposing the contentions advanced on behalf of the petitioner, learned counsel appearing for the respondents submitted that there is no merit in the application filed on behalf of the petitioner. He pleaded that the impugned orders passed by the Assessing Authority and the Appellate Tribunal do not require any interference by this Court. According to him, a proceeding was initiated on a complaint and, in course of enquiry, it was found that the proprietor of the establishment had engaged 24 employees without extending the benefit of the Act of 1952 to those employees. Since the petitioner is the son of one Prabhu Kumar Gupta, who was the proprietor of the establishment, after his death,

liability of late Prabhu Kumar Gupta has been shifted upon him. According to him, in course of the proceeding initiated by the Assessing Authority, the establishment was asked to furnish documents and records, but in spite of several opportunities having been given to the establishment, the records and documents were never produced for verification. Since the petitioner had evaded the production of the records on several occasions, in the light of the available facts and figures dues were assessed payable by the petitioner and the Assessing Authority passed the order whereby the liabilities have been fixed upon the petitioner for the period intervening between August, 2003 and December, 2007.

8. On query, learned counsel for the respondents admitted that in case of the petitioner for the period intervening between 1992-93 and 2000 another proceeding was initiated in which order was passed against him both by the Assessing Authority and the Appellate Tribunal. The said orders were set aside by the writ court and challenge to the order passed by the learned single Judge in the intra-court appeal has also been dismissed by the Division Bench, but in the light of observations made by the Division Bench, a fresh proceeding has already been initiated against the petitioner.

9. I have heard learned counsel for the parties and

carefully perused the record.

10. The case of the petitioner is squarely covered with the order of this Court passed in CWJC No. 4061 of 2011, which was filed by him for setting aside the order dated 01.10.2010 passed in ATA No. 107(3) of 2004 by the Tribunal whereby and whereunder the appeal of the petitioner had been dismissed as well as for quashing of the assessment order dated 16.01.2003 passed by the Assessing Authority under Section 7A of the Act of 1952 by which total dues amounting to rs.2,92,236/- besides interest amounting to Rs.1,65,670/- under Section 7Q of the Act of 1952 was assessed. The said writ petition bearing CWJC No. 4061 of 2011 was allowed by this Court vide order dated 01.07.2013 considering the ratio laid down by the Supreme Court in **Food Corporation of India vs. Provident Fund Commissioner [(1990) 1 SCC 68]** and the impugned order passed under Section 7A of the Act of 1952 as well as the appellate order passed by the Tribunal were quashed. Challenging the said order dated 01.07.2013, the respondents preferred an intra-court appeal vide LPA No. 1263 of 2013 which was dismissed vide order dated 18.09.2017 observing therein that the writ court had not committed any error in interfering with the matter. It is admitted case of the respondents that the facts of the aforestated CWJC No. 4061 of 2011 were identical to the facts of

the instant case and the parties are also common. The only difference between the two cases is that they relate to different period. Thus, the order passed in CWJC No. 4061 of 2011, which was affirmed by the Division Bench in LPA No. 1263 of 2013 would squarely cover the present case.

11. Accordingly, the impugned order dated 03.02.2011 passed in ATA No. 14(3) of 2009 by the Tribunal and the assessment order dated 31.10.2008/06.11.2008 and the order dated 24.11.2008/28.11.2008 passed by the Assessing Authority are quashed on the same grounds, as mentioned in the order dated 01.07.2013 passed in CWJC No. 4061 of 2011. However, the respondents would be at liberty to proceed in the matter against the petitioner in accordance with law after following the observations made by the Supreme Court in **Food Corporation of India Vs. Provident Fund Commissioner, reported** (Supra).

12. With the aforesaid observation, the writ petition is allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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