

HON'BLE SRI JUSTICE S.V. BHATT

W.P. Nos.30193 OF 2011, 30194 OF 2011, 30195 OF 2011, 30200 OF 2011, 5720 OF 2012, 5733 OF 2012, 5735 OF 2012, 5738 OF 2012, 5759 OF 2012, 5761 OF 2012, 19456 OF 2014, 31134 OF 2015, 34596 OF 2016 AND 17991 OF 2017

COMMON ORDER:

Heard Mr.Koka Satyanarayana Rao for petitioner and Mr.T.Balaji for respondents.

The petitioner in the instant batch of writ petitions challenges the proceedings of 1st respondent calling upon the petitioner to pay the amount towards damages and interest for delayed payment of P.F. for the specific period. The learned counsel appearing for the parties have made their submissions by referring to the averments in W.P. No.30193 of 2011. The counsel have stated that with minor changes in the dates and averments, rest of the writ petitions are substantially same and similar, hence by referring to the averments in one case the entire batch of writ petitions can be disposed of. The statement is placed on record.

W.P. No.30193 of 2011:

The issue arises under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act'). Greater Hyderabad Municipal Corporation is the petitioner. The petitioner challenges order No. AP/61840/P.D. Cell.II/RO/Hyd/2011/3 dated 05.04.2011. Through the order impugned in the writ petition, the 1st respondent called upon the petitioner to pay a sum of Rs.66,78,731/- towards damages and interest for delayed payment of P.F. for the period October,2008 to February,2010. The petitioner

in the writ affidavit raises a jurisdictional ground on the levy or demand of damages or interest prior to issuing notification in the year 2011. In other words, the voluntarily P.F. contribution by petitioner for the subject period ought not to result in further penal consequences of damages and interest. According to petitioner, a notification is required in law for contribution.

Mr. Balaji opposes the maintainability of writ petition under Article 226 of the Constitution of India, firstly, by contending that the petitioner ought to work out the remedy of appeal before the Tribunal under Section 7 (I) of the Act and this Court ought not to consider a jurisdiction which is not raised before the authority much less examine or record a finding on mixed question of fact and law.

The petitioner challenges the order as one passed behind the back of petitioner and for all purposes it is an *ex parte* order.

The learned counsel for petitioner relies on paragraph 2 of the order which reads thus:

“Whereas Summons Notice No.AP/ 61840/ P.D.Cell.II/ RO/ Hyd/ 2011/9 dated 08.02.2011, was issued to the employer of the aforesaid establishment to show cause as to why damages under Section 14B of the Act should not be levied and the employer was also afforded opportunity of personal hearing on 23.02.2011 to enable the employer to present his case. None appeared and no communication is received from the employer. Sri A.V.Walwalkar, Asst. P.F. Commissioner appeared on behalf of the department. The departmental representative stated that they have not yet received the acknowledgement card showing the proof of service of notice. Therefore, the inquiry is adjourned and posted to 09.03.2011. On 09.03.2011 none appeared on behalf of the establishment, nor any communication received from employer. Sri A.V.Walwalkar, Asst. P.F. Commissioner

(PD) represented the department. The departmental representative filed copy of the acknowledgement serving the notice under Section 14B. In spite of giving reasonable opportunity of being heard, the employer failed to avail the opportunity. Hence, Penal damages as applicable shall be levied. In view of the above, proceedings u/s. 14B is concluded.”

to contend that when *ex parte* order is passed and the same is challenged before the Court, the respondents satisfy the Court that opportunity was given to petitioner and in spite of opportunity given, the petitioner did not appear or participate in the enquiry. Therefore, he prays for setting aside the order impugned in the writ petition.

From the reading of Para excerpted above, it is clear that first a notice of hearing dated 23.02.2011 was given and case adjourned to 09.03.2011. On 09.03.2011 by referring a notice said to have been served on the petitioner, the enquiry is concluded and order impugned in the writ petition is passed. The objection of respondents that the petitioner can file an appeal in the present circumstances of the case is untenable because the appellate Court it comes to the conclusion that opportunity was not given to petitioner, even then matter is remitted to 1st respondent for consideration and disposal in accordance with law. Prima facie, this Court is satisfied that the opportunity provided cannot be construed as reasonable. In view of the above, to meet the ends of justice and fair play, the writ petition is ordered as follows:

a) proceedings impugned in the writ petition are set aside, matter remitted to 1st respondent for hearing and disposal on merits in accordance with law.

b) the petitioner is given liberty to file reply, produce record within four weeks from the date of receipt of a copy of this order and file the same before the 1st respondent. The 1st respondent conducts enquiry as is deemed fit and passes orders within six weeks thereafter.

In view of the above, rest of the writ petitions are also ordered on the same terms and conditions.

No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date: 06.04.2018
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S.V.BHATT, J