

**THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**WRIT PETITION NO.9539 OF 2009**

**ORDER:**

This Writ Petition is filed challenging the Coverage Intimation of the second respondent dated 22.11.1999 and the consequential letter of the first respondent dated 17.04.2008.

2. The petitioner is a recognized school and is conducting classes upto 10<sup>th</sup> class. While so, the officials of the respondents inspected the petitioner in the month of November, 1999 and sought details of the employees working therein. The management of the school furnished the details of the employees working as on 09.11.1999 in the proforma prescribed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1954 (for short, the Act). Thereafter, the second respondent issued Coverage Intimation dated 22.11.1999 intimating the petitioner about the applicability of the Act and the scheme framed thereunder to it on the basis of the particulars furnished by it in November, 1999. Subsequently, the first respondent issued a letter dated 17.04.2008 directing the petitioner to comply with the requirement under the Act. The petitioner alleged that the Coverage Intimation dated 22.11.1999 and the letter dated 17.04.2008 were issued without any notice and affording an opportunity of personal hearing to it and the same are violative of principles of natural justice.

3. A counter-affidavit has been filed by the respondents stating that before passing the impugned letters, sufficient

opportunity was given to the petitioner and as such there was no violation of principles of natural justice. It is further stated that the petitioner earlier filed W.P.No.17234 of 2003 and the same was dismissed and that though the petitioner is having efficacious alternative remedy of appeal under Section 7(i) of the Act, it did not avail the same and filed the present Writ Petition, which is not maintainable.

4. Sri K.M.Mahender Reddy, learned counsel for the petitioner, argued that before issuing the impugned letters, the respondents did not issue any show cause notice calling for the explanation or given the opportunity of personal hearing. He further argued that there is inconsistency in recording the strength of the employees working in the school and that the cause of action and the relief sought in W.P.No.17234 of 2003 is different and hence the present Writ Petition does not hit by *res judicata*. He relied upon a decision of the Apex Court in **Central Board of Trustees Vs. Indore Composite (P) Ltd.**<sup>1</sup> and sought to set aside the impugned letters of the respondents.

5. Sri Y.Ravindra, learned counsel for the respondents, argued that on the basis of the information furnished by the petitioner i.e., with regard to the employees working as on 09.11.1999, the respondents issued the Coverage Intimation and subsequent letter in accordance with the provisions of the Act. He further argued that though the second respondent issued the Coverage Intimation in the year 1999, the petitioner filed the

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<sup>1</sup> (2018) 8 SCC 443

present Writ Petition in the year 2009 i.e., after lapse of 10 years and that the petitioner did not explain any reasons for such delay and sought to dismiss the Writ Petition on the ground of laches.

6. As per the proforma submitted under the Act for giving particulars of employees, the total strength of employees working in the school indicated as on 01.11.1999 was 14 teaching staff, 2 non-teaching staff and 2 hostel staff, in all 18, whereas in the office file note of the respondents, which is placed before this Court along with material papers, it was shown as 16 including part time teachers and 2 hostel workers, in all 18. Strangely, the Enforcement Officer reported that there was strength of 20 employees as on August, 1999. In spite of there being difference in the strength of the employees, the respondents have treated the total strength as 21 (16+2+3) as on 01.08.1999 and accordingly issued the Coverage Intimation dated 22.11.1999 brining the petitioner into the purview of the Act indicating its total strength as 20.

7. With regard to the letter dated 17.04.2008 of the first respondent directing the petitioner to comply with the provisions under the Act and Scheme framed thereunder and that in any event if the petitioner is aggrieved may avail the remedy of approaching EPF Tribunal or this Court is concerned, the said letter cannot be treated as an order and it is only a consequential communication in pursuance of the Coverage Intimation brining the petitioner under the purview of the Act.

Hence, the validity of the Coverage Intimation dated 22.11.1999, which is the basis for the entire litigation to decide whether the petitioner falls under the purview of the Act, has to be decided.

8. Admittedly, there is inconsistency with regard to the strength of the employees in the three separate documents as they reflect different strength of employees i.e., in the proforma dated 09.11.1999, the strength of the employees is shown as '18', in the office note of the respondents dated 18.11.1999, the strength is shown as '21' and in the Coverage Intimation dated 22.11.1999, the strength is shown as '20'. Hence, the respondents ought to have given an opportunity to the petitioner calling for the explanation of the petitioner and after conducting the enquiry, ought to have passed the orders in accordance with law, but the respondents, on the face of the records, did not conduct enquiry or issued any notice to the petitioner, but straight away issued impugned letters, which is in gross violation of the doctrine of *audi alteram partem*.

9. The attendance register pertaining to the petitioner-school was duly inspected and signed by the first respondent indicating that the strength of the employees varied from month to month, but at all the points, they were less than 20 and hence the petitioner-school does not come under the purview of the provisions of the Act. Moreover, on perusal of the record, it is clear that the impugned letters are issued without giving any notice or opportunity to the

petitioner and against the principles of natural justice. In the circumstances, though the petitioner is having the efficacious alternative remedy, as the impugned letters were issued by violating the principles of natural justice, this Writ Petition is maintainable.

10. For the reasons stated above, the Writ Petition is allowed, setting aside the Coverage Intimation of the second respondent dated 22.11.1999 and the letter order of the first respondent dated 17.04.2008. However, this order shall not preclude the respondents from initiating fresh steps, if they desired, against the petitioner in accordance with law by giving reasonable opportunity to it. No order as to costs. As sequel, the miscellaneous petitions pending if any shall stand closed.

Date: 26-12-2018  
TJMR

**T.AMARNATH GOUD, J**

