HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No. 17025 of 2009

ORDER

Heard the learned counsel for the petitioner and learned Standing Counsel appearing for the respondents 1 and 2.

2. The Writ Petition is filed by the petitioner seeking to declare the order passed by the 2nd respondent in proceedings No. AP /RO/NZB/PD/21925/2008-09/218, dated 23.07.2009, received on 04.08.2009, imposing damages and interest as illegal, unjust and contrary to law.

3. The facts of the case are that the petitioner's Organisation is covered under the provision of Employees Provident Fund Act. The petitioner's management was paying the contributions to the Department. However, there is a delay in paying contributions in respect of 5 employees for the period with effect from 01.01.2004 to 01.01.2007. The petitioner's establishment paid contributions in respect of the 5 employees up to 31.03.2008. On an earlier occasion, by virtue of the orders passed by this Court, in W.P. No.8484 of 2008, the petitioner in all deposited a sum of Rs.77.315/-. After adjustment of the amount as determined by the department in respect of the 5 employees at Rs.59,232/- , the balance of Rs.18,083 was to be refunded by the respondent's organisation. However, orders are passed on 23.07.2009, stating that the petitioner's Organisation failed to pay the statutory dues for the period from October, 1997 to June 2008 in time. The petitioner's Organisation alleged that the respondents passed the said orders, without giving any notice or opportunity. Further when the said orders were passed, the respondent did not refer to delay in payment of contribution from October, 2007. Since, the impugned

proceedings are issued without notice to the petitioner's Organisation, present Writ Petition has been filed.

4. The respondents filed counter affidavit, stating that since the petitioner's Organisation failed to pay the contributions under various provisions of the Act, action under Section 14(b) has been initiated through notice No. 134, dated 01.06.2009, fixing the personal hearing on 23.06.2009. However, the said notices were returned with an endorsement 'not claimed'. To give one more opportunity, notice No. 184 dated 26.06.2009 was issued. It was also returned with an endorsement 'not claimed'. Thus, the respondents have no other alternative, than to proceed ex parte and levied damages through the impugned order. In these circumstances, it is not open for the petitioner to say that he was not issued any notice.

5. Having heard both the counsel and from the perusal of the material on record, the facts which are not in dispute are that the petitioner's Organisation is covered under the provision of Employees Provident Fund Act and the petitioner's Organisation was paying the contributions in respect of the employees, employed by it. However, since there was a delay in payment of the contributions, but the same was also complied with more particularly in respect of 5 employees up to 31.03.2008. In fact, pursuant to the orders passed by the Court in Writ Petition No. 8484 of 2008, the petitioner's Organisation deposited in all Rs.77,315/-. After adjusting the amount of Rs.59,232/-, the balance amount of Rs.18,083/- was with the respondents organisation. When the impugned orders were passed, which was the subject matter of Writ Petition No. 8484 of 2008, the respondents Organisation did not refer the delay in payment of contribution from October, 2007 onwards.

6. Be that as it may, the only point that arises for consideration is whether the petitioner was given a reasonable opportunity to represent its case before the respondent organisation?

7. During the course of hearing, learned standing counsel, appearing for respondents, placed on record the Xerox copy of returned cover containing the notice addressed to the petitioner's Organisation. A perusal of the same would indicate that the said notice was not claimed and returned to sender. The date of sending of the said notice was 30.06.2009.

8. It is the specific case of the petitioner that the petitioner's Organisation was closed in 05.01.2008 itself. Thereafter, there was no one to take responsibility. However, the Xerox copy of the returned cover placed on record by the respondent organisation is dated 30.06.2009. Therefore, this Court is of the opinion that when the petitioner's Organisation was closed in the month of January 2008 itself, the question of sending a notice in the month of June 2009 to the petitioner's Organisation may not arise. In these circumstances, it cannot be said that the petitioner's Organisation have not claimed the notice sent before passing the impugned order in the Writ Petition.

9. However, the Petitioner, pursuant to the orders of this Court ,as stated supra, deposited amount of Rs.77,315/- and after adjustment of Rs.59,232/-, the balance of Rs.18,083/- is still with the respondent's organisation.

10. It is relevant to mention here that the petitioner is not disputing the amount raised by the respondent's organisation. The basic grievance of the petitioner is that it has not given an opportunity before passing the impugned order. If that be so, this Court is of the opinion that the passing of the impugned orders will amount to violation of principles of natural

justice. But at the same time the impugned orders in the present Writ Petition are passed in the month of July 2009. At this length of time, this Court is not inclined to set aside the same. However to put a quietus to the long pending litigation, this Court directs the petitioner's establishment to submit a detailed representation to the 1st respondent, raising all the objections with regard to the amounts claimed in the impugned proceedings within a period of four weeks from today. On submission of such representation, the 1st respondent is directed to consider and pass appropriate orders after giving an opportunity to the petitioner as per law. Till the final orders are passed the respondents are directed not to take any coercive steps against the petitioner. It is needless to observe that the excess amount of Rs.18,083/- pending with the respondent organisation shall be adjusted in the amounts that will be determined by the respondent's organisation.

11. With the above said observation the Writ Petition is disposed of.

The Miscellaneous Petitions pending, if any shall stand closed.

P. KESHAVA RAO, J

Dated: 13.11.2018

JR

HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No.17025 of 2009

Dated: 13.11.2018

JR