

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.5227 OF 2007

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with the order dated 8.1.2007 passed by the 1st respondent in ATA No.366(1)/2005, which was confirmed by the 3rd respondent- Assistant Provident Fund Commissioner (Enforcement), Barkatpura, Hyderabad, dated 20.8.2004, as illegal and arbitrary, and to set aside the same.

2. Heard the learned Government Pleader for Co-operation, Agricultural and Marketing for the petitioner; Sri M. Ramesh Reddy, learned Standing Counsel for respondents Nos.1 to 3, and the learned Government Pleader for Agriculture.

3. It has been contended by the petitioner that the 1st respondent vide order dated 8.1.2007 in A.T.A.No.366 (1)/2005, ordered the petitioner to pay contributions of E.P.F. in respect of the casual workers for the period commencing from October, 1986 to June 2003, and that the said order was passed by the 1st respondent without application of mind and without deciding whether the petitioner is liable to pay the amounts for its employees. Further, it has been contended by the petitioner that the petitioner comes under Agriculture and Co-operative Department of Government of A.P, which is one

of the several welfare wings of the State Government and E.P.F. Act has no application to the State Government. It has been contended by the petitioner that in the year 1990, the Director of Horticulture sent proposals to the Government seeking permission to fill up 134 posts of Mali and Malans to maintain gardens of VIPs besides other vacant posts of Fitters, Mason, Gate-Keeper, Cleaner and attender, and that the Government vide G.O.Ms.No.761, dated 29.3.1990 permitted to fill up the posts of 90 Malies and 59 Malans through employment exchange, and in pursuance of the same, the Director of Horticulture engaged 112 of casual labour on daily wage basis, which is 75% of the vacant posts as per the selections made by the screening committee and that the casual labour reported to duty during September 1990 and April 1991, and subsequently, as per the orders of the State Government vide G.O.Ms.No.228 dated 2.9.2004, the services of 84 casual labourers have been regularized with effect from 2.9.2004. It has been contended by the petitioner that during the year 1986, the then State Government had taken a decision to develop Tank bund and in order to implement the development works, the Department of Horticulture engaged 30 casual labour, and the wages were paid to them by R & B Department till 1994 and thereafter, as the R & B department was not in a position to pay wages, a request was made to the Government for redeployment to the Horticulture Department.

and thereupon, the Government passed orders vide G.O.Ms.No.146 dated 7.6.1994 deploying the casual labour working with the R & B to the Horticulture Department from June 1994, but the 1st respondent passed orders directing the petitioner to pay EPF amount to those casual labourer right from 1986 till 2003.

4. Further, it has been contended by the petitioner that EPF amount cannot be recovered in respect of the casual labourer, who were not employed by Horticulture Department, prior to 1994 and if at all, the 1st respondent intends to recover E.P.F. contributions, the 1st respondent must proceed against R & B department, under whose control, the casual labourer were working from 1986 to 1994, and that the 1st respondent without adjudicating whether E.P.F Act has any application in the case of casual labourer engaged by the State Government, mechanically passed orders that E.P.F amounts should be paid by the petitioner from October 1986 to June 2003 which is arbitrary, illegal.

5. The learned Standing Counsel for respondents Nos.1 to 3 contended that E.P.F. Act has application in respect of casual labourer employed by the petitioner, and that every opportunity was given to the petitioner before passing the impugned orders and that no illegality has been committed by the 1st respondent in passing impugned orders, and in the absence, this Court

should not normally interfere with the orders passed by the authorities, and there are no merits in this writ petition.

6. This Court has considered the rival submissions made by the parties and perused the material available on record. Admittedly, the casual labourer were deployed from R & B to the petitioner-Department vide G.O.Ms.No.146, dated 7.6.1994. It is the main contention of the petitioner that EPF Act has no application to the State Government and further, the casual labourer, in respect of whom, the petitioner was asked to pay contributions, were deployed in the year 1994 to work with the petitioners. Therefore, this Court is of the view that the 1st respondent must decide the question as to the applicability of the E.P.F. Act to the casual labourer employed by the petitioner, and further, the 1st respondent must also consider the fact that casual labourer were deployed to the petitioner-Department from R & B vide G.O.Ms.No.146 dated 7.6.1994. The approach of the 1st respondent in directing the petitioner to pay E.P.F. contributions for the period prior to 1994 may not be proper. Therefore, this Court is of the view that the matter can be remanded to the 1st respondent by setting aside the impugned order passed by the 1st respondent dated 8.1.2007.

7. Accordingly, the Writ Petition is allowed setting aside the order dated 8.1.2007 passed by the 1st respondent in ATA No.366(1)/2005, and the matter is remanded to the 1st

respondent to consider the case of the petitioner once again by giving a clear finding as to the applicability of E.P.F. Act to the petitioner-department and then, pass appropriate orders with regard to the period of payment of contributions. It is needless to say that the 1st respondent shall pass orders after giving opportunity to the petitioner and respondents. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Dated: 31.12.2018.
nn.



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31/12/2018

Nn.