

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.24606 of 2018

ORDER ::

This writ petition is filed questioning the proceedings dated 09-07-2018 passed by the 1st respondent, whereby and whereunder the interlocutory application filed by petitioner under Section 7A (4) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, (for short, 'the Act') seeking to set aside the *ex-parte* order dated 07-06-2018 was rejected.

2. Sri G.Vidyasagar, learned senior counsel appearing for the petitioner contended that enquiry under Section 7A (4) of the Act is initiated against the petitioner-company as long back as in the year 2015, and on every date of hearing, the petitioner has been attending the enquiry without fail and in the light of the same, 1st respondent ought not to have passed the impugned order without affording opportunity of hearing to the petitioner and to put forth its case and in the facts and

circumstances, the 1st respondent ought to have entertained the interlocutory application filed by the petitioner seeking to set aside the *ex parte* order dated 07-06-2018. Learned counsel further states that the petitioner had to make many clarifications on the depositions recorded by the enforcement officer and, therefore, the impugned order passed by the 1st respondent refusing to set aside the *ex-parte* order is in gross violation of principles of natural justice. It is also stated that the petitioner is ready and willing to participate in the enquiry on any date suitable to the respondent-authorities. Sri. T. Balaji, learned standing counsel for respondents 1 and 2, on the other hand, submits that the petitioner attended enquiry on 23-05-2018 and on that date, though it was informed by the secretarial staff of the 1st respondent, the next date of hearing to be on 27-06-2018, but in fact an adjournment notice duly signed by the Asst. Provident Fund Commissioner was sent to the petitioner informing the next date of hearing as 07-06-2018 and the same was received by

the petitioner and in the light of receipt of adjournment notice by the petitioner, it was incumbent upon the petitioner to attend the enquiry on 07-06-2018 instead of going by the date of adjournment given by the staff of the 1st respondent office.

3. Admittedly, petitioner attended enquiry on 23-05-2018 and it is stated that he was informed the next date of hearing to be on 27-06-2018. Learned standing counsel for respondents 1 and 2 concedes that the date of hearing as 27-06-2018 was given by the secretarial staff but states that adjournment notice indicated the date of hearing as 07-06-2018. Learned senior counsel states that though the adjournment notice was received by the petitioner, as he was already informed the next date of hearing to be on 27-06-2018, it created some confusion and therefore could not attend the hearing on 07-06-2018, the day on which the *ex-parte* order was passed.

4. Even according to the case of the respondents, the petitioner has been attending enquiry on every date of hearing.

I find some force in the contention of learned senior counsel appearing for the petitioner that the petitioner could not have been attended the enquiry because of the two dates of enquiry; one given by the secretarial staff and another given by the Asst. Provident Fund Commissioner by way of adjournment notice. This Court is of the opinion that the petitioner could not attend enquiry on 07-06-2018 because of the confusion as stated above. In the result the impugned order passed by the 1st respondent is set aside and consequently the order dated 07-06-2018 being an *ex parte* order is also set aside and the matter is remanded to the file of 1st respondent. However, the order dated 07-06-2018 passed by the 1st respondent is set aside only on the ground of petitioner not being afforded an opportunity of putting forth his case, the petitioner is directed to appear enquiry before the 1st respondent-authority on 30-07-2018 at 10:30 AM and put forth his case. It is also made clear that in case the petitioner fails to attend enquiry on the date so specified hereinabove, it is open for the 1st respondent

to pass appropriate orders in accordance with law. It is also clarified that the prohibitory order dated 12-07-2018 will be subject to the orders to be passed by the 1st respondent, pursuant to remand, and shall not be given effect to till then.

5. In the result, the writ petition is allowed to the extent indicated above. Miscellaneous petitions if any pending in the writ petition shall disposed of. There shall be no order as to costs.

Dated: 18-07-2018
NRG



A.RAJASHEKER REDDY, J

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Dated 18-07-2018