

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1152 of 2018

JUDGMENT: (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

In this Writ Appeal, the appellant challenges the dismissal of the writ petition instituted by levying challenge to a decision taken by the statutory authority under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, "for short, the Act".

2. We have heard the learned counsel for the appellant - establishment. We have also heard the learned standing counsel for the respondent - Regional Provident Fund Commissioner.

3. The substance of this Writ Appeal is an order in the nature of an assessment and proceedings under Section 7-A of the Act, that was passed by the competent authority. The challenge levied before the learned single Judge was that adequate opportunity of pre-decisional hearing was not extended in as much as the establishment had engaged the counsel, who had filed Vakalatnama and thereafter, the proceedings were carried essentially without opportunity of hearing being extended to the establishment and its counsel.

4. A reading of the order of the respondent would show that the proceedings stood listed before that authority on different occasions. But the fact of the matter remains that there was no hearing, in the sense that there was no opportunity to make oral submissions, on the basis of materials and record, which the establishment wanted to make available. We see that there was dereliction on the part of the establishment in utilizing the opportunity properly since the engagement of the counsel itself was apparently not at the first

instance. Be that as it may, having regard to the enormous amount for which the proceedings have concluded following the procedure under Section 7-A of the Act, we also see the contentions of the establishment, which tries to make distinction of the quality of payments which are to be earmarked as non-accountable allowance for the purpose of determining the wages, going by the contentions of the establishment. Under such circumstances, we are of the view that notwithstanding the availability of statutory remedy by way of an Appeal, this is a case where ends of justice would be satisfied if the appellant is given an opportunity of hearing by the respondent within a reasonable time.

5. In the result, for the aforesaid reasons, the impugned order of the learned single Judge and the order impugned in W.P.No.25641 of 2018 are set aside paving way for further consideration of the proceedings under Section 7-A of the Act. This shall be carried forward by the respondent by giving an opportunity to the appellant to furnish materials and submit contentions within an outer limit of three weeks from the date of receipt of copy of this Judgment. If such materials are furnished, the respondent will conclude the proceedings within a further period of three weeks from such date.

6. The Writ Appeal is accordingly ordered. Miscellaneous petitions pending in this Writ Appeal, if any, shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J