IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 5483 of 2001
Date of Decision: 15.12.2018

The Regional Provident Fund Commissioner-II
...Petitioner
Vs.
The Employees Provident Fund Appellate Tribunal and another
...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajesh Hooda, Advocate for the petitioner.

Ms. Upasana Dhawan, Advocate for respondent No.2.

RAJIV NARAIN RAINA, J. *(Oral)*

1. Having heard learned counsel for the parties in some detail on the impugned order dated 04.12.2000 passed by the Employees' Provident Fund Appellate Tribunal, New Delhi, perusal thereof reveals that it leaves much to be desired in the reasoning adopted by the Tribunal in paragraph Nos. 7 & 8. The discussion therein, if it may be called one, is perfunctory and cryptic. There is no clarity of mind or application of law on the subject and their ratio. A judgment of the Calcutta High Court has been picked up to hold that default has to be taken from the day applicability of the EPF Act, 1952 was decided which means the date of passing of the assessment order under Section 7-A of the Act while in the present case, the EPF Organization issued notice to the respondent-establishment on 11.05.1998 calling upon them

to deposit the dues of provident fund contributions for the period 01.04.1996 to 22.09.1997. The amount was deposited without protest by the respondent establishment according to learned counsel for the petitioner. Mr. Hooda argues that the date 11.05.1998 is the date of issuance of notice to the respondent-Establishment to deposit the dues from 01.04.1996 to 22.09.1997 whereas the liability arose from 01.04.1996 itself. He places reliance on the judgment of Supreme Court in M/s S.K. Nasiruddin Beedi Merchant Limited Vs. Central Provident Fund Commissioner and another, AIR 2001 SC 850 referring to paragraph No. 6 thereof. The Supreme Court held that applicability of the Act to any class of employees is not determined or decided by any proceeding under Section 7-A of the Act but under the provisions of the Act itself. When the Act became applicable to the employees in question, the liability arises. What is done under Section 7-A of the Act is only determination of quantification of the same. Therefore, the contention put forth on behalf of the appellant that their liability was attracted only from the date of determination of the matter under Section 7-A of the Act does not stand to reason.

2. It may be noticed that this judgment is subsequent to the decision of the Tribunal in this case and obviously was not available to it. Another matter which disturbs the Court on perusing the order of the Tribunal is that a Supreme Court judgment has been mentioned without referring to its citation anywhere in the impugned order. One is left in

the dark. In these circumstances, it would be appropriate if the matter is remanded to the Central Government Tribunal-cum-Labour Court in exercise of its powers as the duly constituted Employees Provident Fund Appellate Tribunal at Chandigarh to pass a fresh order after hearing both the parties. The matter being old, the parties may formulate their point in writing for the Tribunal's consideration to be presented before it on appearance so that the cases of both sides are revisited.

3. Accordingly, the impugned order is set aside to make way for remand.

4. Nothing said in this order is an expression of this Court on the merits of the case and the Tribunal will take an independent view.

5. Parties to appear before the Tribunal on 28.01.2019.

6. Registry to remit the paper-book of this case to the Tribunal, that is, the Central Government Industrial Tribunal-cum-Labour Court-cum- Employees Provident Fund Appellate Tribunal, Chandigarh.

(RAJIV NARAIN RAINA)
JUDGE

15.12.2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No