

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.31079 of 2018
Date of Decision: 07.12.2018

PGIMER

... Petitioner

VS.

Regional Provident Fund Commissioner I, Chandigarh ... Respondent

CORAM: HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Amit Jhanji, Advocate for the petitioner

G.S. SANDHAWALIA, J. (Oral)

The petitioner seeks quashing of the order dated 29.06.2018 (P13) passed by respondent whereby the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 have been made applicable to the contractual employees engaged by the petitioner-Institute. The challenge has also been laid to the order dated 19.09.2018 (P14) issued by the said respondent calling upon the petitioner-Institute to show cause as to why criminal proceedings under Section 14-AC of the Act be not initiated for non-compliance.

A perusal of the paper-book would show that on an earlier occasion, the order had been passed way back on 15.01.1979 (P7) by the said respondent who assessed the arrears of provident fund dues under Section 7A of the Act. Appeal of the petitioner was dismissed on 19.05.2010 (P8) by the Appellate Tribunal and CWP No.12334 of 2010 came to be filed which was disposed of on 17.12.2012 (P11) and the matter was remanded for consideration afresh in the light of the letter issued by the Government of India dated 18.09.1975 resulting in non-application of the provisions of the Act to the petitioner-Institute. Resultantly, the order dated 29.06.2018 (P13) has been passed by exercising the powers under Section

7A of the Act whereby in principal respondent has agreed that the letter dated 12.09.1975 excludes the petitioner-establishment as the regular employees of petitioner-establishment are in receipt of benefits like contributory provident fund and other social security benefits as envisaged under the PGI Act, 1966. However, the respondent has held that huge number of contractual labour is being appointed through contractors and the contractors have breached the model code of conduct. It is in pursuance of this order that the show cause notice under Section 14-AC has also been issued.

It is not disputed that section 7-I provides for remedy of appeal to the Tribunal. Section 7-I reads as under:-

“7-I. Appeals to the Tribunal. – (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government, or any authority, under the proviso to sub-section (3), or sub-section (4), of section I, or section (3), or sub-section (1) of section 7A, or section 7B except an order rejecting an application for review referred to in sub-section (5) thereof, or section 7C, or section 14B may prefer an appeal to a Tribunal against such order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.”

It is also a matter of record that on an earlier occasion also, the petitioner had come to this Court challenging the order of appellate authority and was partly successful to that extent. In such circumstances this Court is of the opinion that once there is an alternative and efficacious remedy provided under the Statute, it would not be appropriate for this Court to exercise its extraordinary writ jurisdiction. Reliance can be placed on

this extent whereunder the Apex Court held that the writ jurisdiction is not to be exercised where the parties have an alternative and efficacious remedy as it is a discretionary powers. The relevant portion reads as under:-

“30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law.”

Faced with this counsel submits that liberty may be given approach the Appellate Tribunal in accordance with the provisions of the Act. The writ petition is accordingly dismissed as not maintainable with

liberty to approach the Tribunal. In case the appeal is filed within four weeks from today, the Tribunal shall proceed to hear the case on merits.

Keeping in view the fact that the petitioner-Institute is engaged in a socially laudable object of treating patients and is a premier Institute of North India, it is expected that the respondent shall not initiate any criminal proceedings till the period of four weeks on the basis of show cause notice (P14).

07.12.2018

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(G.S. Sandhawalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No