IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10451 of 2011

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Assistant Provident Fund Commissioner, Regional Office, Employees Provident Fund Organization, having his office at Bhavishya Nidhi Bhawan, R. Block, P.S.- Sachivalaya, District- Patna.

... ... Petitioner

Versus

M/S Sri Satya Sai Vidya Vihar, Sari Prasad, Rukunpura, Baily Road, P.S.- Rupaspur, District and Town- Patna.

... ... Respondent

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Appearance :

For the Petitioner/s : Mr. Kuber Pathak, Advocate
For the Respondent/s : Ms. Nivedita Nirvikar, Advocate
Ms. Sonakshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 14-03-2019

Heard learned counsel for the petitioner and learned counsel for the respondent.

2. In the present case, the question arose with regard to the applicability of the Employees Provident Fund and Miscellaneous Act, 1952. The Authority initiated a proceeding under Section 7A of the Act. The applicability of the Act was challenged by the establishment of M/S. Sri Satya Sai Vidya Vihar, having stated that the employees employed therein never touched 20 and onward. The establishment appeared and produced certain records to establish that the establishment has/had only engaged 11 persons althrough, for applicability of the Act essential ingredient is 20 employees employed in the establishment.

3. All the points which have been mentioned in the objection petition have been quoted in the order of the Assistant Provident Fund Commissioner and rejected the claim on the ground that the aforesaid plea was taken after more than 5 months, but the authority did not record a finding with respect to the number of persons employed in the establishment, had ever reached 20 or more. The order of the Assistant Provident Fund Commissioner was challenged before the Appellate Tribunal and the Appellate Tribunal in the operative portion of the order has stated that the register was produced by the establishment verified by the Enforcement Officer shows that it is a genuine register. The report of the Enforcement Officer does not reveal the details of the employees engaged by them and on that ground the order passed by the Authority under Section 7A of the Act has been set aside.

4. When a new record was placed before the Appellate Tribunal, in such circumstances, the obligation lies with the Appellate Tribunal to remand back the matter giving a direction to the Authority under Section 7A of the Act to examine and verify the authenticity of the record rather giving its own finding. Merely on the plea of delay of five months cannot be a ground to reject the claim of the establishment outrightly, but the Authority under Section 7A was required to examine the issue in objective manner giving its finding with regard to number of persons employed in the establishment and in consequence applicability of the Act to the establishment.

5. In such view of the matter, the order of the Assessing Authority as well as the Appellate Tribunal suffer from illegality as they are not well discussed or reasoned orders, without giving finding on number of employees employed in the establishment.

6. Accordingly, the order of the Employees Provident fund Appellate Tribunal dated 22.03.2011 passed in A.T.A. No.194(3) of 2006 as well as the order of the Assistant provident Fund Commissioner dated 23.03.2005 are set aside. The matter is remanded back to the Assistant Provident Fund Commissioner to examine the applicability of the Act under Section 7A of the Act and pass a reasoned order taking into consideration the plea which has been taken by the petitioner that the establishment has never employed 20 or more persons and will also examine whatever the objections taken by the establishment by filing protest petitions. All the process should be completed within a period of three months from the date of receipt/production of a copy of this order on day-to-day basis.

7. With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	28.03.2019
Transmission Date	