IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1011 of 2014

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M/s Super Kisan Udyog through Proprietor Shekh Shahnawaz Hussain, Village Dubey Dehariya Rampur, P.O.- Mujan, District- Kaimur Bhabhua

... ... Petitioner/s

Versus

1. The Regional Provident Fund Commissioner, Bihar, Bhavishya Nidhi Bhawan, R. Block, Road No.6, Patna- 800001
2. The Assistant Provident Fund Commissioner, Bihar, Bhavishya Nidhi Bhawan, R. Block, Road No.6, Patna- 800001

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shravan Kumar, Sr. Advocate
		Mr.Dinesh Maharaj, Advocate
For the Respondent/s	:	Mr. Prashant Sinha, Advocate
		Mr. Baua Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 22-07-2019

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

In the present case, the petitioner is challenging the order dated 28.10.2013 whereby and whereunder the Regional Provident Fund Commissioner, Bihar, Patna has made an assessment of Rs.9,85,985/-only payable by the petitioner under the dues as has been stated that the said amount has already been recovered from the petitioner.

So far as the order is concerned, it is appealable in nature and the petitioner will be at liberty to challenge the same before the Employees Provident Fund Appellate Tribunal-cum-Central Government Industrial Tribunal, Dhanbad, but this matter is confined to the earlier action of EPFO as EPFO had made an assessment of Rs.29,72,155/- as outstanding dues and also calculated the interest amount of Rs.11,14,924/-, in total Rs.40,87,079/- and that amount has already been recovered by the EPFO establishment. The only question has been left that the EPFO establishment after making adjustment of Rs.9,85,985/-, the rest amount has been returned to the petitioner, but the petitioner is claiming that the said amount remained with the EPFO for a long period, caused financial loss to the petitioner and financial gain to EPFO, so the petitioner is entitled to the interest over the amount kept by the EPF Establishment. So, only the premise of litigation is whether the EPFO Establishment is obliged to return the principal amount along with interest, though the principal amount has already been returned, which was recovered from the petitioner.

The short fact in this case inter alia that EPFO Establishment initiated proceeding under 7A of EPF Act against the petitioner for not paying the consideration in terms of EPF Act the claiming working of 20 regular persons and 100 casual persons. It has been alleged that even after repeated notice, the petitioner-establishment did not appear to participate in the proceeding and ultimately, an ex parte order of assessement was passed whereby and whereunder the aforesaid amount has been assessed, thereafter, the petitioner felt aggrieved filed a review application under Section 7 B of the EPF Act, which remained pending for a long period and during pendency of review application, the money, which was assessed, was recovered from the account of the petitioner and later on, review application was rejected by perfunctory order. The order of assessment was challenged before the Appellate Tribunal, Delhi unsuccessfully, whereafter the order of the assessment including the appellate order was tested before this Court in CWJC No.8463 of 2010. This Court has justified the ex parte order, but held that the order of assessment was not based on material fact indicating continued employment of 20 persons regular employees and 100 persons casual employees continued to be remained engaged with the Establishment from December 2000 to November 2005 and, accordingly, the matter was remanded back for fresh assessment based on material. Ultimately, Assistant Provident Fund Commissioner made assessment of Rs.9,85,985/-, which has already been lying with EPFO.

This Court is not giving any opinion on the merit of the order passed by the Authority, but only thrust has been given by the petitioner that though difference of amount has already been returned, but they have kept the money for a long period and, as such, they are obliged not only to return the principal amount but also obliged to pay the interest amount on the said amount which EPFO Establishment earned the interest while keeping the said amount of money keeping the same with-self, whereas, counsel for the EPFO submits that there is no such provision for payment of principal along with interest and, as such, the petitioner does have right to claim the interest over the principal amount, which has been returned to the petitioner and, at the same time, he submits that they cannot blame the order passed by the authority, which is ex parte order, as they did not participate, but the question would arise while passing the ex parte order, it must be based on some material facts and the ex parte order does not disclose on what basis they have made assessment of Rs.29,72,155/- and, at the same time, it was the duty of the Authority that the money recovered is relatable to the person actually working with establishment, unless properly identified, the benefit arising from contribution will not be available to them, so primary duty is that the person should be identified on whose behalf and for whose benefit the money has been assessed, so the benefit can be given to them in future, the order which has been passed ex parte does not deal with the matter nor has dealt with materials for arriving to the amount of assessment, but recovered the said amount.

This Court is not giving any opinion on the ex parte order, but the question is that it must be based on some material, in such a situation, when the huge amount of the petitioner remained with the EPFO Establishment, at the same time, they have also recovered the interest amount over the said amount and when they themselves have taken interest over the amount then equity lies upon the Employees Provident Fund Establishment to pay the interest over the principal amount as they have kept such a huge amount for their own use, in such circumstances, the petitioner is not only entitled to the difference of amount, but also entitled to the interest.

In such view of the matter, this Court directs that the Authority would compute 9% compound interest per annum on the principal amount and same should be paid to the petitioner within a period of six months.

This writ application is allowed to the aforesaid extent with the aforesaid observations and directions.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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