

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.28 of 2018

In

Civil Writ Jurisdiction Case No.11998 of 2011

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Ram Krishna Residential High School son of Late Rameshwar Singh, resident
of Mohalla- Krishnapatti, P.O. P.S.- Jamui, District- Jamui. Appellant/s
Versus

1. The Regional Provident Fund Commissioner, Serpentine Road, R. Block,
Road No. -6, Patna-1
2. The Assistant Provident Fund Commissioner-cum- Enquiry Officer,
Adampur Chowk, Bhagalpur, Bihar.
3. The Employees Provident Fund Appellate Tribunal, New Delhi through its
Presiding Officer.
4. The Recovery Officer, Office of the Recovery Officer, Employees Provident
Fund Organization, Labour Ministry, Govt. of India Adampur Chowk
Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Chittranjan Sinha, Senior Advocate
Mr. Arun Kumar, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 23-04-2019

This intra court appeal has been preferred by the appellant
against the judgment dated 23.11.2017 passed by the learned
single judge in C.W.J.C. No. 11998 of 2011.

2. As per the case of the appellant, the facts in brief are that
Ram Krishna Residential School, Krishnapati, Jamui originated
from a small tuition center. On 27.05.2004, one person posing
himself to be an inspector of the Employees Provident Fund
Organization (for short ' the EPFO') visited the school and
inspected the premises. The regular Principal was persuaded by
the Inspector in giving him list of 20 persons who were not



employees of the institution. This, as per the case of the petitioner was done by the Principal because of his differences with the management. No enquiry report was supplied by the authority of the EPFO inspite of verbal assurances. It is stated that the management rushed to the office of the respondents who refused to give the so called enquiry report. The management requested the respondents to make a fresh enquiry in his presence.

3. Further case of the appellant is that the management of the school appeared on 27.09.2005 where he was informed about the next date in the hearing. However, on the next date the respondents refused to entertain the documents being provided by the management. After a lapse of about five months the Assistant Provident Fund Commissioner was pleased to pass an order dated 13.07.2006 (Annexure 1 to the writ application) in the proceeding under Section 7A of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF and MP Act '). By the said order the dues payable under the EPF and MP Act and the allied dues on the basis of wages were assessed at Rs. 32,560/- per month. Further dues to be paid by the establishment under Section 7(Q) of the EPF and MP Act was also assessed.



4. The appellant preferred C.W.J.C. No. 11228 of 2006 in this Court against the assessment of dues payable as contained in letter dated 13.07.2006. By order dated 18.10.2006 the learned single Judge was pleased to dismiss the writ application in view of adequate efficacious remedy of appeal being available to the appellant under Section 7-I of the EPF and MP Act.

5. The petitioner preferred an appeal being ATA No. 669(3)/ 2006. The Presiding Officer of the Employees Provident Fund Appellate Tribunal (for short 'EPFAT') was pleased to dismiss the appeal holding that there was no material to reject the list of 20 employees signed by the Principal of the establishment and no infirmity was noticed in the order of the authority.

6. As such the appellant preferred C.W.J.C. No. 11998 of 2011 praying therein to quash the order dated 13.07.2006 passed by the Assistant Provident Commissioner, Bhagalpur in the proceeding under Section 7A of the EPF and MP Act, for quashing the order dated 20.05.2011 passed in ATA no. 669(3)/2006 by the Presiding Officer EPFAT, for quashing the order dated 14.06.2011 passed by the Recovery Officer by which the Principal of the school was issued notice to show



cause why warrant of arrest should not be issued and for other relief to which he is found entitled.

7. By judgment dated 23.11.2017 the learned single judge was pleased to dismiss the writ petition (CWJC No. 11998 of 2011) as being devoid of any merit.

8. Heard Mr. Chittranjan Sinha, learned senior advocate assisted by Mr. Arun Kumar for the appellant. The contentions raised on behalf of the appellant is that the number of employees of the school never reached up to 20 in any single month since its incorporation and thus it would not come under the purview of the Act. Further that without enquiry and without verifying the records the authorities passed an ex parte order.

9. Further great stress was laid on the list of employees as enclosed with the 3rd supplementary affidavit filed on behalf of the appellant in CWJC No. 11998 of 2011 to stress that the list contains no details, it did not contain the name of father of a number of employees and that the same was not signed by the Principal. A number of decisions was also cited on behalf of the appellant in support of their contention.

10. With respect to the first contention of the appellant that at no point of time in any single month did the number of



employees in the school reached 20 and as such in view of Section 1(3) (a) of the Act, the provisions of the Act would not be applicable, it may be stated here that it was the regular Principal of the school who provided the list of 20 persons employed in the institution. Further the appellant has not stated as to who are the 'fake persons' mentioned in the list of 20 persons provided by the Principal.

11. So far as the contention of the appellant that an ex parte order had been passed against the school, from perusal of the averments made in the writ application it transpires that the petitioner-appellant has categorically stated that the management of the school appeared on 27.09.2005 whereas the order in the proceedings 7A of the EPF and MP Act came to be passed on 13.07.2006. Further from perusal of the records of the writ application it would transpire that the original record of the Section 7A proceeding under EPF and MP Act was called for by the learned Single Judge and on perusal of the original record the learned Single Judge found that the proceeding was adjourned on several dates but the Principal and the proprietor of the establishment not only failed to appear on the given dates but also did not file any written statement nor contested the matter.



12. The third contention of the learned senior counsel for the appellant was that the list containing the details of the employees did not contain the signature of the Principal. From perusal of the relevant annexure (enclosed as part of Annexure 6 series to the third supplementary affidavit in the writ application) of the petitioner it transpires that the list of employees is an enclosure to a letter dated 29.05.2004 written by the Enquiry Officer, Munger under the Employees Provident Fund Organization to the Assistant Provident Fund Commissioner, SRO, Bhagalpur. It is stated in the letter that in compliance of the direction he visited the establishment and the Principal was requested to fill up the coverage proforma which is self explanatory. Enclosed with the letter was the proforma for coverage filled up by the Principal and Form 5A.

13. From perusal of the 'proforma for coverage' which contains the list of employees it transpires that it has the columns only with respect to the name, father's name, joining and wages of the employees. Although, it is true that it does not contain the name of father of some of the employees but the same is not such a lacuna which would make the document itself suspicious. With respect to the list not containing the signature of the Principal of the school we find that with respect



to Form 5A enclosed with the aforesaid letter dated 29.05.2004, there is a specific space provided for putting the signature of the employer. Same is the position with respect to the list of essential documents forming part of Form 5A. No such space requiring the signature of the Employer/ Principal of the school is provided in the 'proforma for coverage' and as such in our opinion the absence of signature of the Principal on the said list would not make it suspicious. In any case in the letter dated 29.05.2004 the Enquiry Officer, Munger has categorically stated that it was the Principal who was requested to fill up the coverage proforma.

14. The learned senior counsel appearing on behalf of the appellant has relied on the order dated 26.08.2011 passed in C.W.J.C. No. 6018 of 2010, order dated 21.08.2014 passed in LPA no. 638 of 2012, order dated 28.03.2016 passed in LPA No. 391 of 2013, order dated 19.08.2016 passed in LPA No. 53 of 2011, order dated 18.09.2017 passed in LPA No. 1263 of 2013, order dated 03.11.2017 passed in LPA No. 1228 of 2013 and the judgment reported in 1990 (1) SCC 68 (Food Corporation of India vs. Provident Commissioner and Others). It may be stated here that without entering into the details of the facts of the different cases cited above, so far as the facts of the instant case



is concerned, they are clearly distinguishable in so far as the Enquiry Officer had sent along with his letter dated 29.05.2004 the proforma for coverage duly filled in by the Principal of the school himself. So far as the proceedings under Section 7A of the EPF and MP Act is concerned, at the stage of appeal and stage of the writ application, it appears that no objection was raised by way of filing an alternative list or by way of pointing out the 'fake persons' in the list. So far as the judgment in the case of Food Corporation of India is concerned, the same states about the nature of the Commissioners power, which is not in dispute.

15. Thus, in view of the facts and circumstances discussed herein above, we find that there is no illegality either in the assessment order dated 13.07.2006, the appellate order dated 20.05.2011. Further the appellant has not made out any case for interference in the order of the learned Single Judge.

16. Accordingly, the instant appeal stands dismissed.

(Amreshwar Pratap Sahi, CJ)

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	NAFR
CAV DATE	
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