IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.756 of 2017
Arising out of
C.W.J.C. No. 16250 of 2015

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M/s Shiva Agro Industries Pvt. Ltd. through its Director, Sri S. P. Narayan, son of Late Ram Prasad Sah, resident of Mohalla- Bajrangpuri, P.S.- Alamganj, District- Patna.

... ... Appellant/s

Versus

1. The Employees Provident Fund Organization through its Commissioner, having its Office in Provident Fund Building, R. Block, Road No. 6, Patna
2. The Regional Provident Fund Commissioner-1, Bihar, Patna.
3. The Assistant Regional Employees Provident Fund Organization, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. P.K. Shahi, Sr. Advocate
		Mr. Shailendra Kumar Jha, Advocate
		Mrs. Neelam Kumari, Advocate
For the Respondent/s	:	Mr.R.S.Pradhan, Sr. Advocate
		Mr. Sarva Deo Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-01-2019

Heard Shri P.K. Shahi, learned Senior Counsel for the appellant and Shri R.S. Pradhan, learned Senior Counsel for the respondents.

2. This appeal questions the correctness of the impugned judgment dated 28th March, 2017 passed in C.W.J.C. No. 16250 of 2015 on the ground that providing the names of the employees for the purpose of transfer of the amount, which is said to be recovered being a statutory obligation and having

not been discharged, the only prayer of the appellant is that the respondent authority be directed to provide the said list for the purpose of transfer of the said amount.

3. The litigation insofar as the assessment under the Employees Provident Fund Act is concerned, has attained finality inasmuch as the assessment order dated 23rd of November, 2004 came to be challenged by the appellant in C.W.J.C. No. 3635 of 2010 that was allowed on 19th September, 2011 and in respect of the issue raised herein the following finding deserves to be noted :-

> "Even while the enquiry report mentions an employment of 40 persons in the petitioner's establishment, their names are missing. This issue having been raised by the petitioner as back as on 26.12.2003, it needed a positive determination by the Assessing Officer, who instead of asking for the details of the employees, has simply accepted the confidential report which nowhere contains any details of the workmen. The records produced by the petitioner in support of the contention regarding the strength of the establishment being below 20, has been brushed aside by holding them to be fictitious. The basis for such finding can nowhere be found in the impugned order."

4. The said judgment was subjected to challenge in L.P.A. No. 638 of 2012 which was allowed on 21st of August, 2014 on the issue of exemption as well as delay against the appellant.

5. Thereafter, the appellant appears to have approached Provident Fund Commissioner, Bihar requesting him to provide the details of the 44 alleged employees whose list had been tendered before the Assessing Officer. It was the case of the appellant that there were no such employees about whom the dispute had been raised and had also questioned the correctness of the applicability of the notification keeping in view the contention that there were less than 20 employees engaged with the appellant.

6. This dispute, in our opinion, stands finalized with the consideration of such issues by the learned Single Judge and by the Division Bench in the judgments referred to hereinabove and the same cannot be allowed to be reagitated. To that extent, the learned Single Judge while dismissing the writ petition, the judgment whereof is impugned herein, cannot be said to have arrived at an incorrect conclusion.

7. The question of the identity of the 44 employees, therefore, being not in dispute now after the finality of the

proceedings, it is for the appellant now to comply with the said assessment order as per the list which now cannot be questioned through these proceedings.

8. The appeal, therefore, lacks merits and is, accordingly, rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

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