04.12.2024
Item No.78
RP
Ct. No.07

WPA 18418 of 2006
Woodlands Medical Centre Ltd. Anr.
Vs.
Union of India & Ors.

Mr. Suddhasatva Banerjee
Mr. Supratic Roy
Mr. Cedric Fernandez
Mr. Nikhil Kumar Gupta
.... For the Petitioners
Mr. Shib Chandra Prasad
Mr. Saikat Pal
.... For P.F. Authority

1. The order of the Assistant Provident Fund Commissioner, Regional Office, Kolkata dated June 23, 2006 in connection with an enquiry under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the order of the said authority dated July 19, 2006 on a review application filed under Section 7B of the 1952 Act is under challenge in this writ petition at the instance of Woodland Medical Centre Ltd.

2. Mr. Banerjee, learned advocate appearing for the petitioners submits that the order dated June 23, 2006 is a non-speaking order. He further submits that the tests laid down by the Hon'ble Supreme Court in the case of Food Corporation of India vs. Provident Commissioner & Ors. reported at 1990(1) SCC 68 was not complied with by the Assistant

Provident Commissioner while passing the impugned orders. He submits that the Assistant Provident Commissioner, by an order dated October 7, 2004, held that there is no amount due and payable from the writ petitioner for the period from 16th November, 1995 to 31st January, 2004 but in the subsequent order dated 23rd June, 2006, it has been held that a sum of Rs.19,97,089/- is payable by the writ petitioner establishment for the period from April 2002 to May 2005.

3. Mr. Prasad, learned advocate appearing for the Provident Fund Authority submits that the Assistant Provident Fund Commissioner after considering the materials available on record determined the amount payable by the writ petitioner establishment. He further submits that the said authority also assigned cogent reasons while dismissing the review application filed by the writ petitioner.

4. Heard the learned advocates for the parties and perused the materials placed.

5. It appears from the record that an enquiry was conducted against the writ petitioner establishment for determination of dues for the period from 16.11.1995 onwards under the Employees Pension Scheme 1995 framed under the 1952 Act. Enquiries were initiated separately for different periods for the purpose of determination of the dues and it was

observed in the said order that the establishment started regular compliance under EPS 1995 with effect from February 2004. The said order further records that the writ petitioner establishment has cleared the entire arrear towards pension fund along with interest.

6. However, from the order dated 23rd June, 2006 it appears that an enquiry under Section 7A was initiated for assessing the dues against evasions/non-enrolment of the employees for EPF 1995.

7. After going through the said order, this Court finds that the authority held that the employer failed to extend membership under EPS 1995 to certain employees varying from 126 for the month of April 2002 to 151 for the month of May 2005.

8. Though the said order records that an enquiry was held but the manner in which the report of such enquiry was considered has not been indicated in the said order. That apart, when the authority after verifying the records arrived at a finding in the order dated 7.10.2004 that there is no dues from the writ petitioner establishment for the period November 16, 1995 to January 31, 2004, this Court fails to understand as to how the same authority could arrive at a conclusion that an amount of Rs.19,97,089/- is due from the writ petitioner

establishment for the period from April 2002 to May 2005. The order dated 7.10.2004 has been impliedly set aside by the same authority which is impermissible as an authority cannot sit in appeal over its own decision. The said order dated 23.06.2006 only records that on perusal of the submission of the employer and the department and after applying mind to evidence on record, it is evident that the employer failed to extend membership under EPS 1995 to certain employees.

9. There is no proper appreciation of records by the statutory authority while arriving at a conclusion that a certain amount is due from the establishment. Since the order is an unreasoned and non-speaking order the same is liable to be set aside and quashed for such reason alone.

10. By the order dated July 19, 2006 the Assistant Provident Fund Commissioner rejected the application for review. This Court has already held that the order dated 23.06.2006 is liable to be set aside. Consequently the order passed on the review application is also liable to be set aside.

11. The Hon'ble Supreme Court in Food Corporation of India (supra) has held that the power is given to the Commisisoner under the 1952 Act to determine the complete actual differences in payment of contribution and other dues by identifying the

workman. It was further observed therein that the Commissioner should exercise his power to collect all evidence and collate all materials before coming to proper conclusion. In the case on hand the Provident Fund Commissioner has passed the order dated 23rd June, 2006 without identifying the workman in respect of whom there may be dues from the writ petitioner establishment.

12. For all the reasons as aforesaid, the impugned orders are set aside and quashed. The authority will be at liberty to proceed in accordance with law after giving an opportunity of hearing to the petitioner and any other interested parties and pass a reasoned order in accordance with law.

13. After this order was passed, the learned advocate for the petitioner draws the attention of this Court to the order dated 25th September, 2006 wherein the petitioner establishment was directed to deposit the amount of Rs.10,00,000/- (rupees ten lacs only) as a condition for grant of interim order. After going through the said order this Court finds that it was recorded in the said order that such payment shall be without prejudice to the rights and contention of the parties and will be subject to the result of the writ petition. Since this Court has set aside the impugned orders, the Provident Fund Authority is directed to refund such amount to the writ petitioner

establishment within a period of three weeks from date of receipt of server copy of this order.

14. The writ petition stands disposed of. No Costs.

15. Urgent Photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(HIRANMAY BHATTACHARYYA, J.)