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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 09.01.2020

+ FAO 268/2017

CENTRAL SECRETARIAT CLUB

..... Appellant

versus

EMPLOYEES STATE INSURANCE CORPORATION

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Satya Narayan Vashishth, Advocate.

For the Respondent: Mr. V.K. Singh with Ms. Prachi Singh and Ms. Nisha Hans, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

FAO 268/2017 & CM APPL.22137/2017 (stay)

1. Appellant impugns judgment dated 03.04.2017, whereby, the petition of the appellant under Section 75 read with Section 76 and 77 of the Employees State Insurance Act, 1948 (hereinafter referred to as the Act) has been dismissed.

2. Trial Court has held that the petition filed on behalf of the petitioner was not filed by a duly authorised person.

3. The reasoning given by the Trial Court in the impugned order is that the petitioner has not placed on record any document to show that Mr. R.C. Batra, under whose signatures the petition has been filed, was the General Secretary of the appellant Club.

4. Learned counsel for the appellant points out that Mr. R.C. Batra was the duly elected General Secretary elected in the Annual General Elections for the year 2002 – 03. Learned counsel for the appellant also points out that all the correspondences on behalf of the appellant had been undertaken by the President and the General Secretary Mr. R.C. Batra and were duly acknowledged by the respondent and the documents were also duly exhibited before the Trial Court.

5. Perusal of the record shows that the appellant in this petition under Section 74 had categorically stated that the General Secretary is the administrative head and competent to sign for and on behalf of the appellant Club and the petition was signed and filed by Mr. R.C. Batra.

6. The petition also bears the seal of the Honorary General Secretary of the appellant Club.

7. In the written statement, the only ground taken by the respondent was that Mr. R.C. Batra is not authorised to file the application. There is no defence taken that General Secretary is not the authorised person on behalf of the appellant or that Mr. R.C. Batra is not the General Secretary.

8. Perusal of the reply exhibited as Ex.PW1/4 before the Trial Court, which was a reply to the notice dated 19.11.2003 and the subject matter of the petition under Section 74 of the Act, shows that the same was also signed by Mr. R.C. Batra as the Honorary General Secretary of the appellant Club.

9. In view of the above, finding of the Trial Court that the subject petition was not filed through a competent person is erroneous and such a finding could not have been returned in the facts and circumstances of the present case.

10. In the impugned order the Trial Court has held that in case Mr. R.C. Batra was not authorised to depose before the Court then there would be no need to discuss the other aspects of the case.

11. Perusal of the order also shows that the Trial Court has not considered the case of the appellant on merits or returned any finding on merit.

12. Reliance placed by the learned counsel for the respondent on the order dated 31.05.2004 in FAO 182/2004 between the parties to contend that the question as to whether the appellant is covered under the Act, also stands conclusively decided, is misplaced.

13. Order Dated 31.05.2004, extracted by the respondent in its reply, shows that the finding is only *prima facie* and further that the Court has also in the subsequent paragraphs stated that the Court is

not expressing any opinion on the said issue.

14. The issue as to whether the appellant is covered under the Act is a question on merit which has to be decided by the Trial Court after considering the evidence led by the parties. The Trial Court has in the impugned order not decided any issue on merits but has rejected the petition filed by the appellant solely on the ground of competence which, as noticed above, was an erroneous finding.

15. In view of the above, impugned order dated 03.04.2017 is set aside. It is held that the petition filed on behalf of the appellant was maintainable. Accordingly, an order of remit is passed.

16. List the matter before the Trial Court for directions on 15.02.2020.

17. The Trial Court shall once again hear the arguments of the parties on merits and dispose of the petition filed by the appellant on merits.

18. It is clarified that this Court has neither considered nor opined on the merits of the contentions of the either parties.

19. Appeal is allowed in the above terms.

20. Order *Dasti* under the signatures of the Court Master.

JANUARY 09, 2020/st

SANJEEV SACHDEVA, J.