

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 11608 of 2020 (O&M)

Date of decision : January 06, 2021

M/s Malviya Shiksha Sadan, Sonipat

....Petitioner

Versus

Regional Provident Fund Commissioner-II, Karnal and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gaurav Mohunta, Advocate for the petitioner.

Mr. Ashish Chaudhary, Advocate for respondents No. 1 and 2.

Mr. Kamal Kant Verma, Advocate for respondents No. 3 to 7.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Petitioner – M/s Malviya Shiksha Sadan, Sonipat has filed this writ petition seeking quashing of order dated 18.02.2019 (Annexure P1) passed by the Regional Provident Fund Commissioner-II.

Brief facts necessary for adjudication of the matter are that respondent – employees i.e. respondents No. 3 to 7 alongwith some others, filed a complaint dated 25.07.2007 regarding their non-enrolment as EPF members from the date on which they became eligible for the same instead of 01.04.2006. The Assistant Provident Fund Commissioner vide order dated 20.05.2011, passed under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short – 'the Act'), concluded that three of the complainants/employees were to be considered from the dates as mentioned in the said order on the basis of various documents like experience certificate, identity card of the school and recommendation letter of the school

to the licencing authority. Establishment – petitioner, was directed to provide all the benefits due from the date of their joining the institution on minimum wages upto the date w.e.f. which they had become members of the EPF i.e. 01.04.2006 and furthermore no share from the employees’ side would be taken from the employees and management was directed to bear the same from its own sources.

It is relevant to note at this stage that the controversy, which had prompted initiation of proceedings, revolved around the period from which the respondents – employees were eligible for the benefits. The Management of the petitioner - institute had admittedly been taken over by the present Management w.e.f. 05.11.2007. Respondents – employees were enrolled as members of the EPF w.e.f. 01.04.2006. However, respondents No. 3 to 7 were claiming eligibility from the date of their appointments in the years 1997-98 etc.

Order dated 20.05.2011 was challenged by the Management before the learned Employees Provident Fund Appellate Tribunal at New Delhi (for short – ‘EPFAT’). Learned EPFAT vide order dated 16.08.2016 (Annexure P4), observed that the Assistant Provident Fund Commissioner did not have jurisdiction to decide whether an employee is entitled to, or required to become or the date from which he is so entitled or required to become a member, under para 26-B of the Employees Provident Fund Scheme, 1952 (for short – ‘EPF scheme’). Thus, the matter was remanded to Regional Provident Fund Commissioner of the concerned area to decide the date from which the employees were entitled to become members for purpose of the Provident Fund contributions.

Pursuant to the remand, impugned order dated 18.02.2019 (Annexure P1) was passed by the Regional Provident Fund Commissioner(II).

The Regional Provident Fund Commissioner while taking into account that the new Management had failed to produce the record of employment of respondent – employees, held that mere change of Management or ownership cannot deprive the employee or worker of the said establishment from their social security benefits under the Act. Learned Regional Provident Fund Commissioner in great detail described the specific documents produced by the employees in question, as is evident from a perusal of order dated 18.02.2019 and proceeded to hold respondents No. 3 to 7 to be eligible for membership of the Employees' Provident Funds Scheme, 1952 (for short – 'EPF scheme') as below:-

1. Sh. Ramesh Kumar w.e.f. 02.03.1998
2. Sh. Dharmpal w.e.f. 02.03.1998
3. Sh. Jitender Kumar w.e.f. 13.07.1998
4. Shr. Sri Bhagwan w.e.f. 23.07.2004
5. Sh. Dharmdas w.e.f. 09.12.2000

Petitioner – establishment was directed to enroll all the employees as EPF members from the date of their joining and deposit their provident fund contribution within thirty (30) days of receipt of order, failing which action under Section 7A of the Act would be initiated.

Petitioner – management preferred an appeal under Section 7-I of the Act against order dated 18.02.2019 before the learned Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh. Initially, learned EPFAT vide order dated 28.06.2019 directed that no coercive steps be taken against the petitioner. Said order was modified on 22.10.2019 (Annexure P6) while clarifying that proceedings under Section 7A of the Act may be initiated/continued against the appellant. Present writ petition was thereafter filed on 14.07.2020 challenging order dated 18.02.2019 (Annexure P1), inter

alia, on the ground that the learned Regional Provident Fund Commissioner – II has exceeded its jurisdiction in directing the petitioner to deposit the PF contribution w.e.f. from the date when they never worked under the management of the petitioner – institution, in view of the finding recorded by the Industrial Tribunal-cum-Labour Court, Panipat vide award dated 05.12.2013. It is also pleaded that an appeal is not maintainable before the learned Central Government Industrial Tribunal-cum-Labour Court for challenging order dated 18.02.2019 whereby the controversy involved is under para 26-B of the EPF scheme.

Petitioner also placed on record an application dated 11.09.2020 (Annexure P15A) moved before the learned Central Government Industrial Tribunal-cum-Labour Court seeking withdrawal of its appeal, though it is not informed whether the appeal actually stands withdrawn.

Learned counsel for the petitioner has vehemently argued that appeal challenging order dated 18.02.2019 has been filed by the petitioner under mistaken advice from its counsel as order passed by the learned Regional Provident Fund Commissioner under para 26-B of the EPF scheme is final and no appeal lies under Section 7-I of the Act. Section 7A of the Act, it is submitted, only deals with determination of the amount due from the employer under the provisions of the Act. It is further contended that there is no conclusive proof of employment of respondents No. 4 to 7 for the period prior to 01.04.2006. Learned counsel for the petitioner has strenuously relied upon award dated 05.12.2013 passed by the Industrial Tribunal-cum-Labour Court, Panipat in respect to respondent No. 4, which has been passed on a reference under Section 10(1) Clause (c) of the Industrial Disputes Act, 1947, regarding legality or justification of termination of the services of the said workman, by the Management in February, 2008. It is submitted that the

learned Labour Court has specifically held that the workman had failed to prove on record evidence of salary, order or record of appointment or engagement for the period prior to 01.04.2006. Stand of the Management to the effect that record prior to 2007 was not available with them, has been noticed by the learned Labour Court as well as the fact that transport department of the Institute was closed in the year 2008 and no other employee was employed by the Management. In this view of the matter, it is argued that the learned Regional Provident Fund Commissioner has wrongly relied upon the documents produced by the private respondents and the relief wrongly afforded. It is, thus, prayed that the writ petition be allowed.

Learned counsel for the respondents while refuting the above said averments submitted that the Act in question is a beneficial legislation and interpretation has to be the one which ensures fulfillment of the purpose of this Act. Provisions of the Act, thus, cannot be interpreted in a narrow pedantic manner. It is argued that the petitioner is in fact indulging in forum hunting. It is submitted that once the learned EPFAT had modified/clarified order dated 28.06.2019 granting interim relief, the present petition has been filed. Moreover, an appeal under Section 7-I of the Act, it is stated, is maintainable before the EPFAT or the Central Government Industrial Tribunal, in the present situation. Learned counsel refers to Section 7 of the Act and Rule 7(2) of the EPFAT (Procedure) Rules, 1997. Proceedings under para 26-B of the Scheme, it is submitted, emanated from the principal proceedings under Section 7A of the Act and the matter was remanded on the ground that the learned Assistant Provident Fund Commissioner had no jurisdiction to decide the same and it is the Regional Provident Fund Commissioner, who is empowered to decide the same. Learned counsel argues that Management played hide and seek with the authorities and took a

convenient plea of not being in possession of the record prior to 2006 and 2007. It is further submitted that observations in award dated 05.12.2013 passed by the learned Industrial Tribunal-cum-Labour Court, Panipat do not have any relevance to the controversy in hand. This is so for the reason that before the learned Labour Court, the employee was challenging his termination in the year 2008 by the Institute to be incorrect and wrongful. Merely because the employee did not challenge the said award passed a number of years after his termination in February, 2008 cannot be held against the employees, who are poor workers. Respondents – employees, it is submitted, were admittedly working as drivers with the Institute, the Management of which was taken over by the present one in the year 2007. It is further submitted that respondents had duly proved their identity cards, certificates issued by the Petroleum Conservation Research Association showing completion of driving training programmes besides various other certificates/documents as well as recommendations of the then Principal of the petitioner - Institute for renewal of the employees' licence which all indicated the said respondent - workmen to be eligible for the benefits under the Act, much prior to 2006. It is, thus, prayed that the present writ petition be dismissed being devoid of any merit.

I have heard learned counsel for the parties and have gone through the file with their assistance.

At the outset, it would be useful to refer the provisions of Section 7 of the Act, Rule 7(2) of the EPFAT (Procedure Rules, 1997), Sections 7A, 7-I, 7-O of the Act and para 26-B of the EPF scheme. Section 7 reads as under:-

7. Modification of Scheme.-- (1) The Central Government may, by notification in the Official Gazette, add to, [amend or vary, either prospectively or retrospectively, the Scheme,

the [Pension] Scheme or the Insurance Scheme, as the case may be].

[(2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.]

Section 7A reads as under:-

7A. Determination of moneys due from employers.—(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the 3[Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:--

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.

[(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be,

on the basis of the evidence adduced during such inquiry and other documents available on record.]

(4) Where an order under sub-section (1) is passed against an employer *ex parte*, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.-- Where an appeal has been preferred under this Act against an order passed *ex parte* and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the *ex parte* order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.

Section 7-I reads as under:-

7-I. Appeals to Tribunal.— (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.]

Section 7-O reads as under:-

7-O. Deposit of amount due, on filing appeal. -- No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent of the amount due from him as determined by an officer referred to in Section 7A:

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this Section.

Rule 7(2) of the EPFAT (Procedure Rules, 1997) reads as under:-

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or **any other authority under the Act**(emphasis added) may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal. Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days. Provided further that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75% of the amount due from him as determined under Section 7-A. Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.

Para 26-B of the EPF scheme reads as under:-

26-B.Resolution of doubts : If any question arises whether an employee is entitled or required to become or continue as a member, or as regards the date from which he is so entitled or required to become a member, the same shall be referred to the Regional Provident Fund Commissioner who shall decide the same.

Provided that both the employer and the employee shall be heard before passing any order in the matter.

Thus, it is clear that the dispensation made by the Regional Provident Fund Commissioner under para 26-B cannot be divorced in the sense sought to be argued by learned counsel for the petitioner. Section 7A(1)(a) of the Act provides that dispute regarding applicability of the Act to an establishment would be decided by the officer/s named therein and the amount due from the employer under any provision of this Act, the Scheme, Pension Scheme or Insurance Scheme would be determined by the said officer, who is vested with the power to conduct such an inquiry as deemed necessary. Para 26B of the EPF Scheme provides for resolution of disputes regarding entitlement of an employee, to become or continue as a member or as regards the date from which he is so entitled or required, by the Regional Provident Fund Commissioner. In the present case, it cannot be disputed that proceedings under Section 26B of the Scheme came into being during the course of inquiry under Section 7A of the Act. The Assistant Provident Fund

Commissioner vide order dated 20.05.2011 had held some of the complainant employees to be entitled to the benefit under the Act from the various dates as mentioned therein. Learned EPFAT, remanded the matter before the Regional Provident Fund Commissioner, on the ground that question of entitlement etc. has to be decided by the said officer as per para 26B of the EPF Scheme and not Assistant Provident Fund Commissioner. Consequently, impugned order dated 18.02.2019 was passed by the Regional Provident Fund Commissioner-II. Admittedly, an appeal was duly filed by the petitioner before the Appellate Tribunal.

A Division Bench of Kerala High Court in **Express Publication (Madurai) Ltd. Versus Regional Provident Fund Commissioner –II 2014 (13) RCR (Civil) 585**, after going through the judgment of the Hon'ble Supreme Court in **S.K.Nasiruddi Beedi Merchant Ltd. V. Central Provident Fund Commissioner [2001 (1) SCT 1130 : (2001) 2 SCC 612]**; **Sarva Shramik Singh v. Indian Smelting & Refining Co. Ltd. [2003 (4) SCT 839 : (2003) 10 SCC 455]**; **Express Publication (Madurai) Ltd. V. Union of India [2004 (2) SCT 243 : (2004) 11 SCC 526]** and **The Management of Express Newspapers Ltd. V. B. Somayajulu (AIR 1964 SC 279)**, has observed that reading of para 26B of the Scheme or any other provisions of the Act by no stretch of imagination can be understood in a manner to say that intention of makers of the statute was to drive the parties to different forums for determination of the relationship and then come back to the forum constituted under this enactment. In the case of **Express Publication** (supra), question involved was regarding relationship of an employer and employee between the parties.

In the present case, the petitioner had indeed filed an appeal before the learned Central Government Industrial Tribunal-cum-Labour

Court-II challenging order dated 18.02.2019. Interim order dated 28.06.2019 (Annexure P5) was admittedly passed in favour of the petitioner. Said interim order was clarified on 22.10.2019 (Annexure P6). Notice under Section 7A of the Act was issued to the petitioner and it is only thereafter that the present writ petition was filed in July, 2020 by the petitioner. Respondents – employees in this case have been agitating since long years for the benefits from the date of their employment till 2006. Though in normal course the petitioner may have been relegated to its remedy under Section 7-I of the Act, but keeping in view the peculiar facts and circumstances, especially the fact that respondents – employees are agitating under beneficial legislation since a number of years, I deem it appropriate and expedient to decide the matter on merits without delving into the said controversy.

Admittedly, the respondent – employees are claiming eligibility for membership of the EPF scheme from the years 1997-1998 etc. They claimed to have joined the institute as drivers. However, they did not have any orders of appointment or appointment letters. Naturally they were not in possession of attendance registers or wage sheets, which in normal course would necessarily be in possession of the Management. A perusal of the file reveals that the Management has taken a very convenient stand that it had taken over the Institute w.e.f. 05.11.2007 and thus did not have the record prior thereto. Respondents – employees admittedly became members of the provident fund w.e.f. 01.04.2006, after the new Management took over the institution. It is neither the case of the petitioner nor are there any such pleadings to the effect that the Institution in question was not in existence prior to 2006. Respondent – employees have adduced the best possible evidence available with them to indicate that they were employed with the petitioner prior to 2006. Documents submitted by each of the respondents -

employees, are clearly detailed in the impugned order dated 18.02.2019 itself. The said respondents - employees have placed on record some of the identity cards issued by the Institute itself prior to 2006 as well as certain certificates/endorsements of the then Principal of the Establishment on applications addressed to the Licencing Authority, Sonipat for renewal of the driving licence of the employees in question. Learned Regional Provident Fund Commissioner has taken in account copies of various proceedings before the Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, wherein then Principal of the Institute has confirmed his signatures on the applications by some of the complainants addressed to Licencing Authority, Sonipat in 1999. There is also a reference to some identity cards issued by the Driver Training Institute, Murthal, Sonipat wherein address of the employee is mentioned to be that of the Establishment. Receipts regarding payments received by the complainants from the Institute have been placed on record.

Learned Regional Provident Fund Commissioner- II has rightly observed that it was the duty of the new Management to obtain all records of the employees from the old Management at the time of taking over the Establishment. Respondents – employees have clearly laid down the basic foundation for their claim and have adduced the best possible evidence in support thereof.

Learned Regional Provident Fund Commissioner has delineated all such documents produced by the complainants as have been relied upon while passing order dated 18.02.2019. The same is not being reproduced for the sake of brevity. It is relevant to note at this stage that it is not the case of the petitioner that documents so produced by the respondents – employees are not genuine or are forged or fraudulent. Indeed, there is no such pleading

much less any such evidence, neither has any such argument been addressed before me. Learned counsel for the petitioner is unable to point out any illegality or infirmity calling for interference.

No other argument addressed.

Keeping in view the facts and circumstances as above, order dated 18.02.2019 passed by the Regional Provident Fund Commissioner - II is upheld and this writ petition is dismissed with no order as to costs. In case, appeal challenging order dated 18.02.2019 is still pending, the same is rendered infructuous and shall be disposed of accordingly by learned Central Government Industrial Tribunal-cum-Labour Court.

January 06, 2021
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No