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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 26010 of 2022

Biswanath Ghose
Vs.
Union of India & Ors.

Mr. Debanuj Basu Thakur
Mr. Sirshendu Banerjee
... For the petitioner.

Mr. Jasobanta Rakshit
... For the Provident Fund Authorities.

The present writ application has been filed challenging the recovery proceedings initiated by the respondent no.3, by issuing a notice dated 28th October, 2022, thereby directing the petitioner's banker to remit a sum of Rs.28,10,899/- in terms of Section 8F(3)(i) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act"). The petitioner says that the petitioner had received the aforesaid communication from his banker in the 1st week of November, 2022.

In course of hearing of the present writ application, Mr. Basu Thakur, learned advocate appearing in support of the aforesaid application submits that an order under Section 7A of the said Act has been passed against the petitioner for the period October, 2019 to May 2022, on 12th August, 2022. The instant recovery proceeding is for enforcement of the aforesaid order. Drawing attention of this Court to a notification dated 11th February, 2014 captioned "instructions on grant of instalment facility to establishments for liquidating the arrears" he submits that he has instruction not to challenge the aforesaid order passed under Section 7A of the said Act, but is interested to avail the facilities of instalments in terms of the aforesaid notification issued by the Employees' Provident Fund Organisation. He says that similar benefits have been offered by the respondents to other establishments, unfortunately, in the petitioner's case despite representation dated 17th November, 2022, the respondents have not permitted such instalment facilities to the petitioner. He says that the petitioner is passing through severe financial distress on account of Covid-19 situation and as such unless instalments are granted, the petitioner will suffer irreparable loss and injury and prejudice.

Mr. Rakshit, learned advocate representing the respondents/ provident fund authorities submits that the aforesaid order passed under Section 7A is in respect of the period from October, 2019 to May, 2022. The petitioner has already defaulted in making payment and it is for such reason, the determination had to be made under Section 7A of the said Act. He, however, does not stand in the way of the petitioner complying with the order passed under Section 7A of the said Act.

I have heard the submissions made by the learned advocates appearing for the respective parties and considered the materials on record. I find that the petitioner has made a representation before the authorities, requesting them to enable the petitioner to liquidate the dues by availing the monthly instalment facilities. I have also found that by the notification dated 11th February, 2014, Additional Central Provident Fund Commissioner (Compliance) of the Employees' Provident Fund Orgainsation, had notified, all Additional Central PF Commissioners (Zones) and other regional offices with regard to their decision to grant instalment facilities to the establishments for liquidating their dues. I find that the respondent no.2 had determined a sum of Rs.28,10,899/- towards the contributions payable by the petitioner under Section 7A of the said Act, for the period from October, 2019 to May, 2022, which the parties agree that the same has been incorrectly recorded as April, 2015 to November, 2018 at internal page 3 of the aforesaid order. In such circumstances there is no reason to treat the petitioner differently. Since the petitioner has volunteered to pay a sum of Rs.2,50,000/- upfront, let the said amount be paid by the petitioner on or before 19th December, 2022. The petitioner shall be entitled to pay the balance amount of Rs.25,60,899/- in fifteen (15) equal monthly instalments payable on/or before 15th of each month, till such time the entire dues are cleared.

There shall be an unconditional stay of the order of attachment dated 28th October, 2022 being the annexure P-3 of the writ application, till 19th December, 2022. In the event, the petitioner makes payment of the aforesaid sum of Rs.2,50,000/- as directed, the interim order shall continue till 31st May, 2024 or until further order whichever is earlier.

It is made clear that in the event the petitioner fails to deposit any one of the instalments as directed, the interim order granted herein shall automatically stands vacated. It is also made clear that the petitioner shall continue to make payment of the current contributions and shall not dispose of any of its assets, except in usual course of business, dealings and transactions.

With the aforesaid observations and directions, the writ application, being WPA 26010 of 2022 is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)