

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 1868 of 2011

RPF COMMNR. and others ***Petitioner***

Mr. S.S. Mohanty, Advocate

-versus-

M/s. Prajatantra Prachar ***Opposite Parties***
Samity and another

Mr. P. Nayak, Advocate
(O.P.1)

CORAM: JUSTICE V. NARASINGH

ORDER
15.09.2022

Order No.

02.

1. This matter is taken up through hybrid mode.
2. Heard Mr. Mohanty, learned counsel for the petitioner and Mr. P. Nayak, learned counsel for the Opposite Party No.1.
3. The present Writ Application has been filed by the RPFC (Regional Provident Fund Commissioner, Orissa) and other officials of the Provident Fund Organisations assailing the order passed by the EPF Appellate Tribunal (Camp hearing at Orissa) dated 29th of July 2010 in ATA No.464(10)/2005 at Annexure-8.
4. It is submitted by the learned counsel for the petitioner that challenging the order dated 10.11.2003 passed by the Assistant Provident Fund Commissioner, Orissa under Section 7B of the

E.P.F. & M.P. Act and the order dated 23.03.2004 passed by the Assistant Provident Fund Commissioner, Orissa, vide Annexure-3 and 5 respectively the petitioner filed an appeal before the EPF Appellate Tribunal wherein the Appellate Tribunal directing the petitioner to deposit the P.F. dues. Assailing the same the petitioner has filed this Writ Petition.

5. It is stated that on a bare perusal of the orders appealed against it cannot be seen, the same was passed in exercise of the powers under Section 7-B of the Employees Provident Fund and Miscellaneous Provision Act, 1952 (hereinafter referred to as Act 52).

6. On perusal of the impugned order of the Tribunal at Annexure-8, it is seen that the very opening sentence of the order passed by the Tribunal, the appeals were treated as one under Section 7(A) of the Provident Fund Act directing the appellant to deposit Provident Fund.

7. It is submitted by the learned counsel for the petitioner Mr. Mohanty that since there is a manifest error in appreciating the lis the case at hand warrants the interference of this Court in exercise of its plenary powers.

8. And it is also brought to the notice of this Court that in the operative portion of the order in Paragraph-6 the Tribunal proceed under the erroneous impression that the order was passed under Section 7-A and 14-B and it is stated that even otherwise the finding of the tribunal that there was no basis for exercise of the appellate power falls for interference since there is no basis for the impugned orders before the Tribunal falls for interference.

9. Per contra learned counsel appearing for the Opposite Party No.1 submits that in terms of the order passed by this Court dated 04.04.2005 in W.P.(C) No.4446 of 2005 the Opposite Party had preferred an appeal and submits that the impugned order of the Tribunal does not justify from any infirmity and does not call for any interference.

10. On perusal of the order at Annexure-8, this Court finds substance in the submission of the learned counsel for the petitioner Mr. Mohanty that the tribunal allowed its judgment to be clouded in the sense that is proceeded under the fallacious impression that the order is one under Section 7-A of the Provident Fund Act and also that there was no basis of the orders which was subject matter of challenge before the Tribunal.

11. On a conspectus of materials on record, this Court is of the considered opinion that interest of justice would be subserved if the matter is remanded back to the Tribunal for hearing afresh in accordance with the Provisions of Act, 52.

12. It is so ordered and accordingly the matter is remanded back to the Tribunal who is stated to be functioning now at Bhubaneswar. For hearing on merits. The Appellate order at Annexure-8 is accordingly set aside.

13. It is made clear that this Court has not expressed any opinion regarding the merits of the matter and it shall be open to the Parties to agitate all the grievances that are available to be raised in accordance with law.

14. Accordingly, the Writ Petition stands disposed of.

(V. NARASINGH)
Judge

Santoshi