

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5796 of 2023

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Bihar Police Building Construction Pvt. Ltd., through its Chief Accounts Officer of Hemant Kumar, aged- 55 years (M), S/o Ashok Kr. Shrivastava, 5 B.M.P. Campus, P.O.- Veterinary College, P.S.- Hawai Adda, Dist.- Patna, Bihar- 800014.

... .. Petitioner/s

Versus

1. Industrial Tribunal cum Labour Court II Shriram Bhawan, Murli Nagar, Jagjivan Nagar, Dhanbad 826003.
2. Commissioner of Provident Fund, Regional Office, Employees Provident Fund Organization, Bhavisyanidhi Bhawan, R. Block, Road No.- 6, Patna- 800001.
3. Assistant Commissioner of Provident Fund, Regional Office, Employees Provident Fund Organization, Bhavisyanidhi Bhawan, R. Block, Road No.- 6, Patna- 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prakash Sahay, Advocate
For the Respondent/s : Mr. Prashant Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL ORDER

2 28-04-2023

In the instant petition, petitioner has prayed for the

following relief(s):-

“1. i FOR THAT the impugned orders are non-speaking and as the same have been passed without taking into cognizance of the various court cases relating to levy of Penal Damages.

ii. FOR THAT the learned Assessing Authority ought to have (i) considered the law decided by the Hon'ble Supreme Court with regard to imposing any penalty. In this case, the decisions of the Hon'ble Tribunal, various High Courts and Apex Court have completely been ignored while passing orders imposing damages.

Iii. FOR THAT the learned Assessing Authority has not acted as per law the damages cannot be as per any strait-jacketed formula. The law is purely in the nature of guideline and not a structured formula of invariable application in all circumstances without reference to the reasons of delay. The impugned orders have been passed without considering the reason for delay and hence it is not sustainable in law.

iv) FOR that for levying damages under section 14B of the Act the employer has



to be given opportunity of being heard. This hearing would not mean mechanical hearing but has to be construed upon some principles. In this case no opportunity of being heard has been afforded by the respondent and as such the impugned orders are merely an arithmetical calculation of the amount claimed without applying judicious mind.

iv. FOR that a perusal of impugned orders indicates that the officer conducting inquiry under section 14B of the Act has not followed the law laid down by the Hon'ble Apex Court and the High Courts in their correct perspective. Therefore, there is no inquiry or finding of the fact that the appellant has willfully and deliberately withheld the EPF contributions and also the Enquiry Officer has not exercised his discretion vis-à-vis the delays in remittance of PF dues.

Accordingly the impugned orders suffer from serious legal infirmities.

v. For that to refrain the respondent from taking any further action for realization of the amount involved in the impugned order till disposal of this appeal. After hearing the parties, be further pleased to set aside the impugned orders dated 23.05.2018 - Annexure-1 and to direct respondent 3 to dispose of this application the earliest i.e within three months."

The petitioner has already invoked remedy before the C.G.I.T. and it is pending consideration. The C.G.I.T. is hereby requested to decide the petitioner's case within a reasonable period of time, since, recovery is under process.

With the above observations, present writ petition stands disposed of.

(P. B. Bajanthri, J)

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