

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5003 of 2023

M/s Municipal Corporation Samastipur through its Deputy Municipal Commissioner Md. Shahid Raza Khan, (Male) aged about 32 years, S/o- Mumtaz Ali Khan, R/o Mandavi Hostel, J.N.U., South West Delhi, P.S.- Basantkunj, District-South West Delhi, New Delhi.

... .. Petitioner/s

Versus

1. The Regional Provident Fund Commissioner II Employees Provident Fund Organisation, Regional Office, Muzaffarpur.
2. The Regional Provident Fund Commissioner, II Employees Provident Fund Organisation, District Office, Darbhanga.
3. The Area Enforcement Officer, Employees Provident Fund Organisation, Darbhanga.
4. The Recovery Officer, Employees Provident Fund Organisation, Muzaffarpur.
5. The Branch Manager State Bank of India, Samastipur Branch, Court Campus, Samastipur.
6. The Branch Manager, Bank of Baroda, Marbari, Bazar Branch, Samastipur, District-Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar, Adv.
For the Respondent No. 1 to 4:	:	Mr. Satyendra Kumar Jha, Adv.
For the Respondent No.5:	:	Mr. Apurv Harsh, Adv.
	:	Mr. Prashant Bhardwaj, Adv.
For the Respondent No.6:	:	Mr. Nishi Nath Ojha, Adv.
For the Respondent/s	:	Mr. Prashant Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 22-06-2023

1. The present writ petition has been filed for the following reliefs:-

“(i) For quashing the Order contained in letter no. 580 dated 29.07.2022 (A4) issued by Respondent No. 2 whereby and whereunder direction has been issued to the petitioner to pay the entire outstanding dues i.e. Rs. 3,56,75,441 (Three Crore Fifty Six Lakh Seventy Five Thousand Four Hundred and forty one) to be paid in the respective accounts of EPFO by the establishment within 50 days to the receipt of the order, and further direction has been issued under Section 14 B and interest payable under Section - 7 Q



of the Act as result of belated payment will be intimated to the employer at a later date.

(ii) For quashing the Order contained in Letter No. 1067 dated 01.02.2023 2022-23/165 dated 20.03.2023, 23.03.2023 (Annexure-5 Series).

(iii) For grant of stay of impugned orders and its consequential action till disposal of the writ petition.

(iv) Any other relief/reliefs for which the petitioner is to be found to be entitled in the facts and circumstances of the case.”

2. Learned counsel appearing on behalf of the petitioner

has stated that the petitioner is the Municipal Corporation, Samastipur. That the employees provident fund was established on 08.01.2011 all over Bihar for daily wage employees. The petitioner-corporation did not have any daily wage employees till 31.11.2016, thereafter, 01.12.2016 a total number of 132 daily wage employees were engaged and the full details of the employees, who were engaged by the Corporation, were sent to the Employees Provident Fund Director on 07.01.2017. That the Employees Provident Fund Officer, Darbhanga, initiated proceedings against the Corporation by issuing show cause notice relating to the period January 2011 to February 2018 and the petitioner-corporation vide Letter No. 630 dated 13.04.2022 has given its reply stating that there were no daily wage employees prior to 31.11.2016. Further, it was also stated that the daily wage payment register was also not available as the same has been stolen by the then Head Clerk-cum-Accountant named, Ashok Gupta, for which an FIR was lodged before the Samastipur, Town



P.S. Further, it is stated by the petitioner that the authority concerned without there being any material on record to show that any daily wage employee was engaged to the Corporation has taken a view that the petitioner was liable to pay the provident fund for the non-existing employees from 08.01.2011 to 02.02.2018 and issued a direction vide Letter No. 580 dated 29.07.2022 to pay the outstanding dues of Rs. 3,56,75,441/- (Three Crore Fifty Six Lakh Seventy Five Thousand Four Hundred and Forty one). Further, it is stated that one out sourcing agency named, Aman Enterprises was engaged by the Corporation on 14.05.2018 but the said agency was not issued any show cause notice during the pendency of the proceedings. That the final order was passed by the authority under Section 7A for the period 08.01.2011 to 02.02.2018 amounting to 3,56,75,441/- (Three Crore Fifty Six Lakh Seventy Five Thousand Four Hundred and Forty one) without there being any evidence or any legal basis and, therefore, prayed this Hon'ble Court to set aside the same.

3. *Per contra*, learned counsel appearing on behalf of the respondents has vehemently opposed very maintainability of the writ petition and stated that the petitioner has an alternative effective remedy of filing an appeal but that the petitioner without availing the said alternate remedy has straightaway approached



this Hon'ble Court and prayed this Hon'ble Court to dismiss the present writ petition. Learned counsel for the respondents has stated that the Corporation was given ample opportunity to produce the records i.e. the attendance register of the employees and other material before the EPFO but they have failed to do, therefore, based on the report submitted by the Inquiry Officer, AEO, DO, Darbhanga, vide Annexure-6, the authority has passed the order which is impugned in the present writ petition.

4. Admittedly, in the present case a perusal of the impugned order shows that the authority concerned except relying on the letter of the Inquiry Officer, AEO, DO, Darbhanga, dated 18.07.2022 vide Annexure-6, wherein it is stated that the Corporation did not produce the required documents and that after arriving at wage figure of one month of the establishment for the October 2019 the dues for the notice period from 08.01.2011 to 02.02.2018 has been calculated, except the above there is nothing on record to show as to on what basis the said AEO, DO has arrived at the amounts calculated, the authority concerned based on the above said statement made by the AEO, DO has simply passed the order in a mechanical manner without giving any reason or adverting to the reply filed by the Corporation wherein it is specifically stated that the Corporation has not engaged any



daily wagers prior to 01.12.2016 and, thereafter, from 14.05.2018 the work was entrusted to an out sourcing agency, therefore, the calculation of the provident fund from 08.01.2011 to 02.02.2018 is passed without there being any material or record or without any legal basis. Even though, the counsel for the respondents has taken the plea that the petitioner has an alternative effective remedy for filing appeal under Section 7(I) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. This Court is of the opinion that when the authority has passed the order without there being any legal basis or giving any proper reason, this Court has got ample power to set aside the said order.

5. This court is of the opinion that the ends of justice would be served if the impugned order dated 29.07.2022 as well as the letter dated 01.02.2023 written to the bank is set aside and the matter remanded back to the Regional Provident Fund Commissioner-II, Respondent No. 2, for passing orders afresh duly taking into consideration the reply filed by the petitioner to the show cause unless and also any other evidence to show that the daily wage employees were engaged by the Corporation prior to 01.12.2016, unless the same is available the authorities simply cannot fasten the liability on the establishment merely on



suspicion that employees were engaged to the Corporation prior to 01.12.2016.

6. Having regard to the above stated facts and circumstances, this Court is constrained to set aside the impugned order dated 29.07.2022 and also the consequential letter 01.02.2023, the matter is remanded back to the authority concerned for passing orders afresh duly taking into consideration the reply to the show cause filed by the petitioner. It is made clear that before passing any orders the petitioner shall be put on notice and given an opportunity of hearing and also adduce any evidence, if necessary.

7. With the above direction, the present writ petition is disposed off.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.07.2023.
Transmission Date	N/A

