

18.
02.01.2023
S.D.

W.P.A. 25792 of 2022

Pronab Kumar Saha

Vs.

The Regional Provident Fund Commissioner-II & Ors.

Mr. Tapas Bhattacharya

Mr. Aviroop Bhattacharya

Mr. Bishnu Prosad Singha Roy

... For the petitioner

Ms. Sima Sengupta

...For the Respondent Nos. 1 to 3

Today, Ms. Sengupta, learned counsel representing the Provident Fund Authorities hands over a copy of the order dated December 31, 2019 along with a photocopy of the envelope, by which the order passed under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'said Act') for the period of November 1996 to July 2007 was attempted to be served on the petitioner. Let the same be taken on record.

Records reveal that by an order dated December 6, 2022, the present writ application had been entertained *inter alia* on the ground that without service of the order passed under Section 7A of the said Act, the Provident Fund Authorities were attempting to initiate recovery proceedings,

by treating the writ petitioner to be in default in respect of a sum of Rs.7,58,520/-.

Ms. Sengupta, learned counsel representing the respondents submits that the aforesaid order was duly attempted to be served on the writ petitioner. Unfortunately, the envelope containing the order was redirected to the Provident Fund Authorities by the postal department with the endorsement 'left'.

Mr. Bhattacharya, learned counsel representing the writ petitioner submits that the office of the writ petitioner at 58/5A/4, B.T. Road, Kolkata 700002 (hereinafter referred to as the "B.T. Road address") has been closed 12 years back and such fact is within the knowledge of the respondents. The respondents without effecting service of the copy of the aforesaid order on the writ petitioner is interested to enforce the same and it is for such reason, the said order was sent to an address where the petitioner no longer maintains his office. He says that the respondents are aware of the present address of the writ petitioner at Block No. A-1/7, 3rd Floor, Karunamoyee Housing Estate, Salt Lake, Kolkata 700091 (hereinafter referred to as the "Salt Lake address").

I find that the grievance of the writ petitioner is not only with regard to non-service of the order passed under

Section 7A, but also with regard to enforcement of such order without service of a copy thereof on the writ petitioner.

I further find that the notices for hearing of case for assessment under Section 7A of the said Act, dated August 31, 2021 and October 5, 2021 have not only been forwarded to the B. T. Road address of the writ petitioner, as mentioned on the envelope but copy thereof has also been marked to the Salt Lake address of the petitioner. It is thus apparent that the respondents were aware with regard to the Salt Lake address of the writ petitioner. Although, an attempt has been made by the respondent to establish that all communications to the writ petitioner has all along been made to the B.T. Road address, I am not impressed with such submissions. I find that copy of such communications as referred to by Ms. Sengupta has also been marked to the Salt Lake address of the writ petitioner. Unfortunately, the photo copy of the envelope which has been disclosed by the respondents through which the order under Section 7A of the said Act was also forwarded to the writ petitioner, does not indicate that the same was also forwarded to the Salt Lake address of the writ petitioner.

Ms. Sengupta has, however, in course of hearing made over a copy of the order dated December 31, 2019 passed under Section 7A of the said Act, to Mr. Bhattacharya, learned counsel representing the writ petitioner.

In view thereof and to avoid all controversies, it would be prudent to permit the writ petitioner to avail his statutory remedy by treating the petitioner to have received the order under Section 7A of the said Act this day.

Since Mr. Bhattacharya, learned advocate representing the writ petitioner has already expressed that his client wants to avail of the statutory remedy, the impugned notice dated November 1, 2022, shall remain stayed for a period of 30 days from today.

It is made clear that if no appeal is preferred within 30 days the order of stay shall automatically stand vacated, without any further order.

I further make it clear that I have not gone into the merit of the claim or counter claim of the parties. If any appeal is preferred the Tribunal shall hear out the same on merits.

With the aforesaid observations and/or direction, the present writ petition being W.P.A. 25792 of 2022 is disposed of.

No order as to costs.

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

(Raja Basu Chowdhury, J.)