

01-08-2023
Court No.2
Sh/22.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

W.P.A. 343 of 2023

Chiranjit Das.

-Vs-

Regional Provident Fund Commissioner & Ors.

Mr. Bikramaditya Ghosh.

..For the Petitioner.

Mr. Bhaskar Roy Mahashaya,

Mr. Sannidhya Dutta.

.. For the P.F.Commissioner.

Heard learned counsel for the parties.

The recovery notice issued to the petitioner on 9th December, 2022 is assailed in the writ petition. By the said notice, the petitioner has been directed to refund the amount of Rs.13,63,924/- along with interest thereon for providing falsified information in availing the benefits of ABRY Scheme.

Learned counsel for the petitioner submits that though the petitioner submitted documents before the authority in reply to a letter issued by the Commission on 29th June, 2022, the recovery notice was issued to the petitioner without granting him an opportunity of hearing. The notice is also silent as to how the authority arrived at a conclusion that the documents submitted by the petitioner were false and also, it is not recorded as to which of the documents were found to be false and on what ground.

Learned counsel further submits that the authority has no jurisdiction to issue such recovery notice under The Employees Provident Fund and

Miscellaneous Provisions Act, 1952 without an order under Section 7A of the said Act.

Per contra, learned counsel for the respondents submits that despite issuance of a letter to the petitioner on 29th June, 2022 directing clarification of the discrepancies found in the documents relied upon by the petitioner in availing the benefits of ABRY Scheme, the petitioner failed to submit the relevant documents and or any explanation in support of his cause.

Since the Scheme is within the purview of the said Act of 1952, the authority has ample jurisdiction to issue recovery notice upon the petitioner.

It appears on mere perusal of the notice that the same was issued without affording any opportunity of hearing or explanation/clarification to the petitioner. The notice is also bereft of reasons for which such a decision was arrived at by the authority.

Co-ordinate Benches of this Court have decided similar issues and set aside similar recovery notices in judgments dated 31st January, 2023 in WPA 285 of 2023 (Prabir Chandra -Vs- Regional Provident Fund Commission & Ors) and judgment dated 27th March, 2023 in WPA 310 of 2023 (Sagar Sarkar -Vs- Regional Provident Fund Commissioner & Ors.), relied upon by the petitioner.

Upon considering the submission made on behalf of the parties and material on record, this Court is inclined to hold that since the petitioner was directed to refund the benefits availed of by him under the

Scheme, he ought to have been granted an opportunity of hearing by the authority prior to issuance of the recovery notice. Violation of the principles of natural justice is apparent on the face of the record.

In view of the above, the notice impugned dated 9th December, 2022 is set aside.

The respondents are directed to revisit the issue upon affording reasonable opportunity of hearing to the petitioner and take a reasoned decision thereto within one month from the date of communication of this order.

The petitioner is at liberty to produce all necessary documents in support of his claim before the authority at the time of hearing.

The decision taken by the authority shall be communicated to the petitioner within a week thereof.

With the above observation and direction the writ petition being WPA 343 of 2023 is disposed of.

There shall be no order as to costs.

Since no affidavit has been invited, allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties expeditiously on compliance of all requisite formalities.

(Suvra Ghosh, J.)