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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on : 14.02.2024

M/s Webtech Engineering Pvt. Ltd.

. . . Petitioner(s)

Versus

Union of India and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Shiv Kumar, Advocate
for the petitioner(s).

Mr. Ravi Sharma, Advocate
for respondents No.2 & 3.

SANJAY VASHISTH, J. (Oral)

1. M/s Webtech Engineering Pvt. Ltd., being the petitioner, has come before this Court for issuance of a writ in the nature of *Certiorari*, for quashing of impugned recovery order dated 07.08.2020 (Annexure P-10), by submitting that same has been passed in violation to the *proviso* to Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, 'the Act of 1952'), without giving any opportunity of hearing to the petitioner – Company. Thus, same being against the principle of natural justice and provision of law, is prayed to be quashed.

2. Counsel for the petitioner submits that on earlier occasion, vide order dated 16.01.2018 (Annexure P-2), it was found that as per record, total amount of Rs.40,63,040/- is payable by the employer in relation to M/s Webtech Engineering Pvt. Ltd., Plot No.20, Sector 25, Faridabad, for the notice period, and by subtracting the deposits already made, it was ordered that petitioner is liable to pay an amount of Rs.29,35,324/-. Said order was

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assailed through writ petition i.e. **CWP-8592/2019**, titled as, “**M/s Webtech Engineering Pvt. Ltd. vs. The Union of India and others**”, which was decided on **01.04.2019** (Annexure P-9). In its preliminary hearing, order dated 01.04.2019, passed therein, is reproduced herein-below:-

“RAJIV NARAIN RAINA, J (ORAL)

Notice of motion.

On the asking of the Court, Mr. Sanjay Tangri, Advocate, who is present in Court, accepts notice on behalf of respondents No.2 & 3 and waives service on them.

Heard.

The petitioner does not dispute its liability to deposit ₹ 29,35,324/- towards contributions. However, the petitioner prays that it may be allowed to deposit the said due amount, less the outstanding amount already paid, in equal installments. The petitioner undertakes to deposit ₹ 2,00,000/- on or before 10th of every month of the calendar year in the account of the EPF organization, till the dues are cleared. Any other incidental charges including interest will be governed by the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Consequently, the instant petition is disposed of on the undertaking of the petitioner.

The attachment order will be kept in abeyance till the entire outstanding dues are deposited subject to the condition that a single default would entail recalling of the entire balance amount forthwith by revival of the recovery notice.

(RAJIV NARAIN RAINA)
JUDGE

April 1st, 2019”

3. Counsel for the petitioner further submits that there being no dispute *qua* the responsibility to deposit the amount, as ordered by the concerned authority, vide order dated 16.01.2018 (P-2), said amount has

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already been deposited in compliance to the undertaking recorded by this Court in its order dated 01.04.2019 (P-9). However, on account of the delay caused, some other assessments were made by the respondents in their order i.e. RRC No.HRFBD5072/0011043/08/04/2020/502/4 860, dated 07.08.2020, which was addressed to the Recovery Officer, Regional Office, Faridabad. As per the said order, recovery of an amount of Rs.15,19,778/-, is yet to be effected through the Recovery Officer of the Regional Office, Faridabad.

4. Both the sides are in agreement to submit that said order has been passed with the defect of non-compliance of the *proviso* to Section 14-B of the Act of 1952.

5. In paragraph No.14 of the writ petition, petitioner pleaded that there is violation of the principle of natural justice and the statutory provisions. However, while filing reply to the said pleaded paragraph, respondents No.2 & 3 in their reply submits as under:-

“14. That the contents of this para of the writ petition are wrong, hence denied, because petitioner was aware of the incidental and the interest charges.”

In the said reply, respondents have nowhere pleaded that before passing of the order under Section 14-B of the Act of 1952, an opportunity of hearing was ever afforded to the petitioner.

6. Counsel for the petitioner submits that though, order impugned herein, was assailable in appeal under Section 7(I) of the Act of 1952, however, in view of the fact that there is complete violation of principle of natural justice, present writ petition is maintainable before this Court. He

further relies on the judgment of Hon'ble Apex Court rendered in **Whirlpool Corporation vs. Registrar of Trade marks, Mumbai; 1991(1) RCR (Civil) 220 : Law Finder Doc Id # 29744**, and paragraph No.13 being relevant is reproduced here-under:-

“13. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

7. After going through the pleadings raised in the writ petition as well as the appended documents therein, and after hearing counsel for the parties, and also being guided by the judgment cited by the petitioner's counsel, this Court finds that the impugned order dated 07.08.2020 (P-10), which admittedly has been passed under Section 14-B of the Act of 1952, is assailable before the Tribunal, as prescribed under Section 7(I) of the Act of

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1952. However, there is no denial that the said order has been passed in violation of the *proviso* to Section 14-B of the Act of 1952, because, no opportunity of hearing was afforded to the petitioner – Management, which amounts to the violation of the principle of natural justice also. Therefore, the order dated 07.08.2020 (P-10), is worth to be quashed.

Accordingly, present writ is **disposed of** in above terms, and order dated 07.08.2020 (P-10) is hereby quashed. However, liberty is granted to the respondents to pass a fresh order, after affording an adequate opportunity to the petitioner, and thereafter, to pass a speaking order on that account, in accordance with law.

(SANJAY VASHISTH)
JUDGE

February 14, 2024

J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~

Whether Reportable: ✓ Yes/~~No~~