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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision: 06.09.2024

Central Board of Trustees, Employees Provident Fund Organisation**...Petitioner****Versus****M/s St. Kabir School and another****...Respondents****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: - Mr. Samir Rathaur, Advocate for the petitioner

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 05.09.2023 (Annexure P-6) passed by respondent No.2-Employees Provident Fund Appellate Tribunal (for short '**Tribunal**') whereby order passed by Adjudicating Authority under Section 7-A of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short '**1952 Act**') has been set aside.

2. The petitioner is Provident Fund Organization and respondent No.1 is a private school. The petitioner got an information from Punjab School Education Board (for short '**Board**') disclosing that respondent No.1-school is having 20 employees still not contributing towards provident fund.

On the basis of said information, the petitioner initiated proceedings against

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the school which culminated in demand under Section 7-A of 1952 Act. The respondent preferred an appeal before the Appellate Authority which came up for consideration before the Tribunal on 05.09.2023. The Tribunal by impugned order dated 05.09.2023 (Annexure P-6) has set aside demand created by Assessing Authority under Section 7-A of 1952 Act. The Tribunal has dropped demand on the ground that foundation of demand was information received from the Board. The school had submitted details with respect to its employees to the Board. As per information submitted to the Board, the school had 20 employees but respondent No.1-school before the authorities as well as the Tribunal pleaded that two employees never joined its organization and they only came for interview. Their names were wrongly added in the list of staff members submitted to the Board.

3. Learned counsel for the petitioner submits that respondent had submitted information to the Board at its own, thus, respondent No.1-school could not back out from the said information. The Assessing Authority had passed a detailed and reasoned order. The petitioner could not collect information from the school in the form of salary slips, attendance register, appointment letters, roll of employees, thus, could not bring on record that two employees, claimed to be not working in the school, were actually working.

4. From the perusal of impugned order, it comes out that Appellate Authority has passed a detailed and reasoned order. The relevant extracts of order dated 05.09.2023 read as under:-



“8. From the rival argument of both the parties, it emerges that the main dispute between both the parties are that whether the institution from which date the learned APFC, Patiala has held the appellant-establishment responsible to pay EPF dues falls within the ambit and purview of the Act or not? As per the appellant arguments, the respondent has held liable to the appellant- establishment w.e.f. 24.03.2006 for EPF dues and the impugned order has been prima facie wrong, arbitrary, incorrect, biased and perverse because at the time of commencement i.e. 24.03.2006 the Institute was not in the ambit of EPF & MP Act, 1952 because as per the provisions of the EPF & MP Act will apply when 20 or more employees are working in the establishment. At the time of current period from 24.03.2006 upto 07.11.2013, 20 employees were not posted and working in the institution. The learned counsel appearing on behalf of appellant-establishment has vehemently argued that the learned APFC, Patiala on the basis of list obtained by Punjab School Education Board(PSEB) has held liable to appellant-establishment for EPF dues w.e.f. 24.03.2006.

9. It is clear that M/s St. Kabir School, Lalouchhi, Distt. Patiala is an affiliated school for educational society. This institution got affiliation from Punjab School Education Board on 24.03.2006. The appellant has admitted that from 07.11.2013 the institution came within the purview of EPF Act 1952 and regular EPF contribution are being paid and deposited. It is admitted very clearly by the appellant that at the time of affiliation, name of 20 employees were given to the PSEB for affiliation and two persons namely Chhote Khan and Jarnail Singh were interviewed and at that basis a list of 20 persons were given to PSEB and obtaining the list from PSEB, the RPFC held liable to the appellant-establishment w.e.f. 24.03.2006. The learned counsel for appellant has drawn the attention of the Tribunal upon salary register annexed with the appeal from March 2006 in which total 18 persons have been



*paid in March. At this the learned counsel of appellant has argued that at the time of assessing and fixing liability only 18 persons were working in March 2006 upto affiliation wrongly the respondent has held liable. Learned counsel for appellant has drawn the attention of the Tribunal upon the page 34 and 57 of the impugned order. At Page no.57 appellant authoritative person has cross-examined to the AEO. AEO has admitted at question no.2 that **"on the basis of list of employees supplied by Superintendent of affiliation, PSEB, SAS Nagar dated 04.08.2015 which in turn was submitted by the establishment to PSEN for affiliation"**. It is also admitted in cross-examination that on behalf of the list the report had been finalized. On the question to the AEO whether any salary or attendance register of the establishment had been verified to cross-check the above list? AEO did not answer in affirmative or negative and on this question he requested for time meaning thereby he did not answer a very important question. From this particular evidence, it is crystal clear that no salary register or attendance register was checked by the AEQ only on the basis of list obtained by PSEB impugned order has been passed.*

10. The learned counsel appearing on behalf of appellant has also drawn the attention of the Tribunal on the Impugned order in which the proceeding dated 04.12.2017 It has been mentioned that representatives of PSEB were stated that as per the official noting, revision of list of staff members was done on the basis of affidavit and pay roll of the period from 2006-2007 to 2009 2030. Representative of PSEB were stated that they are only concerned with the teaching staff only but as they were received representation from the establishment so they have revised the list for session 2006-2007. Representative of the establishment was provided copy of salary paid for the month of March, 2006 and the same was taken on record. Further stated that there have been frequent changes in teaching staff as well as in non-teaching staff. The case was adjourned to



18.12.2017 for further hearing. In the interest of natural justice, the case was adjourned to 08.01.2018 and further to 15.01.2018. Thus, as per PSEB revised list of employees were given by the appellant-establishment and on that behalf the list was revised of the employees. The learned counsel appearing on behalf of appellant has vehemently argued and put his argument in relation to the above contention. If the list was revised by PSEB and the representative of PSEB has mentioned during proceeding before respondent then why not corrected list was obtained by the AEO or respondent it is a matter of observation.

11. It is vehemently submitted on behalf of the appellant that he has given a list of 20 employees to PSEB but two persons namely Chhote Khan and Jarnail Singh after they interviewed they did not turned up and joined establishment and they never get salary from the establishment. From the perusal of record, it appears that these two persons namely Chhote Khan and Jarnail Singh filed affidavit before the respondent during proceeding of enquiry under Section 7-A and also made their statement that they never joined in the appellant-establishment and they never get any salary from the establishment but respondent did not take into consideration the affidavit and statement of those two persons. It is also not clear picture that even these two persons have taken salary. During cross-examination by the establishment, establishment's authorized representative Mr. Sood to the AEO whether any salary or attendance register of the establishment had been verified to cross-check the above list? The AEO did not answer this very important question. The appellant explained it before the respondent but they did not considered it. The list shown of 18 employees in paper book of the appellant.

12. Mere sending a letter of 20 employees to 12 PSEB for obtaining affiliation does not at all establish it that there were



20 employees employed in the establishment and they were getting salary from the institution. There may be a chance that the appellant may have employed Chhote Khan and Jarnail Sing but unless they joined and get salary they will not be the part of the institution and unless they received even a month of salary criteria of 20 employees for fulfillment and operation of the Act does not apply. The learned counsel appearing on behalf of respondent has submitted that unless 20 employees were employed the establishment could not sent the list and affiliation cannot be held by PSEB. There is no force in the argument of respondent because the appellant has come with clear statement that they sent a list of 20 persons for affiliation but two persons did not join and they did not get salary. It is also the contention of the appellant that after affiliation the appellant-establishment sent a letter to the PSEB informing clear position of employees. May be the criteria before the PSEB for affiliation of 20 employees but this list does not held liable under EPF Act to the establishment unless these 20 employees are getting salary from the institution. If the appellant-establishment does not fulfill the criteria for affiliation of 20 persons and institute has got affiliated by PSEB the steps can be taken by the PSEB to cancel the affiliation but only on the basis of the list, the establishment cannot be held responsible for EPF dues.

13. On the above discussion, it is crystal clear that the order of the respondent is beyond the ambit of Law. On 24.03.2006, 20 employees were not getting salary from the institution and criteria of 20 persons was not fulfilled to come within the purview of EPF & MP Act, 1952. The order passed by the APFC, Patiala is perverse and liable to be set aside. Accordingly, the appeal is allowed. The impugned order dated 27.09.2019 passed under Section 7-A and order dated 13.11.2019 passed under Section 7-B of the of the EPF & MP Act, 1952 is set aside.”



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5. From the findings recorded by the Tribunal and arguments of petitioner, it is evident that petitioner except a statement received from the Board had no documentary or oral evidence to prove that school was having 20 employees. The school claimed that two employees had not joined though they were interviewed. The petitioner did not collect information about those employees in the form of salary received by them, roll of employees, attendance register and bank statement etc. The petitioner did not even find it appropriate to record their statements. The respondent claimed that till 2013, they had less than 20 employees, thus, they were not governed by provisions of 1952 Act. By submitting details of two persons, they discharged their burden to the effect that they are not liable to contribute towards Provident Fund. Therefore, it was duty of petitioner to collect independent evidence in support of its claim that there were 20 employees.

6. The Tribunal has recorded findings of facts and no question of law is involved. The petitioner is seeking issuance of writ of certiorari. Different Benches of Supreme Court including a Constitution Bench in ***Syed Yakooob v. K.S. Radhakrishnan, AIR 1964 SC 477*** and a two Judge Bench recently in ***Central Council for Research in Ayurvedic Sciences and another v. Bikartan Das and others, 2023 SCC Online SC 996*** have reminded us that there are two cardinal principles of law governing issuance of writ of certiorari under Article 226 of the Constitution of India i.e. (i) High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal



purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior Tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record; (ii) In a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

7. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. Error of jurisdiction includes order by inferior court or tribunal without jurisdiction or in excess of it or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not



entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.



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8. In the wake of above facts and findings, this Court is of the considered opinion that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

06.09.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No