

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 10098 of 2012

Hare Krishna Shaw & Anr.

Vs.

The Assistant Provident Fund Commissioner (Compliance) & Anr.

For the Petitioners : Mr. Soumya Majumder, ld. Sr. Adv.
Ms. Ashmita Chakraborty.

**For the Respondents/
Provident Fund Authority** : Ms. Aprana Banerjee.

Hearing concluded on : 31.01.2025

Judgment on : 31.01.2025

Shampa Dutt (Paul), J.:

1. The present writ petition has been preferred praying for cancellation and setting aside of an order dated 12th April, 2012 passed by the Assistant Provident Commissioner (Compliance), Sub Regional Office, Barrackpore.
2. Heard the learned counsels appearing for both parties.

3. It appears from the said letter under challenge dated 12.04.2012 that it relates to “applicability of the Employees’ Provident Funds & Miscellaneous Provisions Act and the Schemes framed thereunder”.
4. It has been held therein that on the basis of inspections conducted on 02.06.2012 and 07.03.2012, the authority found the factory engaged in “expert service” included in Schedule I/Class of establishments in Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 and has been pleased to further hold as follows:-

*“.....(b) That the said establishment/factory has employed **54 (fifty four)** persons on **01-12-2000***

*(c) The provisions of the E.P.F. and Misc. Provisions Act, 1952 and Schemes framed thereunder are applicable to your above named establishment together with head office and its branches/departments whether situated at the same place or at different places **with effect from 01-12-2000 finally/provisionally u/s 1(3)(b)** of the EPF & MP Act, 1952 subject to further verification of your records for the earlier period.*

(d) With reference to your application No.....dated.....received for extension of E.P.F. & Misc. Provisions Act, 1952 under Section 1(4) of the said Act on a voluntary basis a Code Number is hereby allotted to your establishment namely.....provisionally covering your establishment with effect from.....pending issue of a notification by the Government of India in exercise of the powers conferred on them by subsection (4) of Section 1 of the E.P.F. and M.P. Act, 1952.

*The **Code No. WB/57819** is allotted to your establishment for the purpose of making compliance with the*

*various provisions of the E.P.F. and Misc. Provisions Act, 1952 and the Schemes framed there under namely E.P.F. Scheme, 1952, Employees' Pension Scheme, 1995 and Deposit Linked Insurance Scheme, 1976. **The Code Number should invariably be quoted in all the correspondences with this Office.***

All the forms prescribed under the Employees' Provident Fund Scheme, 1952, the Employees' Pension Scheme, 1995 and the Employees' Deposit Linked Insurance Scheme, 1976 are available in the P.F. Office and will be supplied free of cost on receipt of your indent. Specimen of forms is enclosed.

Regarding Pension Fund contributions, it should be separated from the Employees' Provident Fund Contributions and shown separately in the respective Forms and remitted separately in Account No. 10.

*As regards the Employees' Provident Funds Scheme, 1952, the Employees' Pension Scheme, 1995 and the Employees' Deposit Linked Insurance Scheme, 1976 dues for the period **from 01-12-2000** the arrears should be remitted within 15 days from the date of receipt of this letter.*

You are directed to fill up Form 5A in duplicate and submit to this Office within 15 days from the date of receipt of this letter."

5. It is the contention of the petitioners that the said letter has been issued directing the petitioners to make payment without giving the petitioners a hearing and, as such, the petitioners have been prejudiced.
6. Learned counsel for the respondents submits that the said coverage has been granted on the basis of an application for coverage

submitted on 07.03.2012 by the petitioners, (a copy of which has been enclosed with the affidavit-in-opposition). The said application was a “proforma for coverage”.

7. It appears that on the date of application that is 07.03.2012, the employment strength was 29 as per the declaration in the said application made (Proforma) and the nature of business as ‘social service’.
8. It is submitted that the letter issued, which is under challenge dated 12.04.2012 shows at clause (b) that the establishment factory had employed 54 persons as on 01.12.2000 and the same was found on inspection and even though the ‘proforma for coverage’ was made in 2012, the payment has been directed to made from year 2000.
9. It appears from the said letter under challenge that the said order was passed on the basis of particulars furnished by the petitioners and on the basis of inspection of records in the petitioners’ establishment.
10. The only grievance of the petitioners is that he was not heard and that the coverage has been granted since 2000 though admittedly the application was made in 2012.
11. Learned senior counsel appearing for the petitioners relies upon Section 7A of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.
12. **Section 7A of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, is as follows :-**

“7A. Determination of moneys due from employers.—

(1)The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—

(a)in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b)determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2)The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—

(a)enforcing the attendance of any person or examining him on oath;

(b)requiring the discovery and production of documents;

(c)receiving evidence on affidavit;

(d)issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3)No order shall be made under sub-section (1), unless the employer concerned is given a reasonable opportunity of representing his case.

(3A)Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due

from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(4)Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.— Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5)No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.”

13. **From the order under challenge,** it appears that the said order by way of a letter “*determining the amount due from the employer*” was passed without giving an opportunity of representing the petitioners’ case.
14. It appears from the record that after the said order “*determining the amount due from the employer*” was passed, the petitioners did not

make an application invoking the provisions of clause 4 of Section 7A of the Act.

15. In view of such fact, **the writ petition is disposed of** with the liberty granted to the petitioners, that he shall apply as per clause 4 of Section 7A of the Act to the authority/officer concerned praying for setting aside of the said order, **within three months** from the date of this order and the authority concerned shall proceed as per the said provisions of law in disposing of the said application of the petitioners/employer herein.
16. **WPA 10098 of 2012 stands disposed of.**
17. All connected application, if any, stands disposed of.
18. Interim order, if any, stands vacated.
19. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)