In the High Court at Calcutta
Constitutional Writ Jurisdiction
<u>Appellate Side</u>

Present :

The Hon'ble Justice Ajay Kumar Gupta

WPA No. 21799 of 2009

Regional Provident Fund Commissioner, Kolkata, W.B.
Vs.
Employees' Provident Fund Appellate Tribunal & Anr.

For the petitioner : Mr. Shiv Chandra Prasad

Heard on : September 03, 2025.

Judgment on : September 03, 2025.

<u>Ajay Kumar Gupta, J:-</u>

1. Affidavit-of-Service filed on behalf of the petitioner in Court today is taken on record.

2. Despite good service, none appears on behalf of the respondents. No accommodation is sought for.

3. Regional Provident Fund Commissioner, West Bengal being the petitioner challenges the impugned order dated 2nd September, 2008 passed by the then Employees' Provident Fund Appellate Tribunal, New Delhi in A.T.A. No. 415(15) of 2008 (M/s. DMP Constructions Private Limited –vs.- R.P.F.C, Kolkata) and prays for direction to rescind, recall or

withdraw the impugned order dated 02.09.2008 being Annexure- 'P-2' herein.

4. It is submitted by the learned counsel appearing on behalf of the petitioner that the Regional Provident Fund Commissioner-II (Compliance) Regional Office, Kolkata has categorically stated in his order dated 9th May, 2008 and come to a conclusion that the final assessment was passed to the tune of Rs. 1,69,947 + 10,67,092 + 80,53,620 totaling to Rs. 92,90,659.00 (Rupees ninety two lakhs ninety thousand six hundred fifty nine only) in respect of accounts and directed to deposit the same within a period of 15 days from the date of receipt of order and the receipted copy of challan be produced in support thereof, failing which the department will be at liberty to recover the same as per provisions of the Act and those assessments were made on the basis of (1) balance-sheet of establishment from 2002-03 to 2005-06, (2) general ledger and cash book (found maintained electronically), (3) returns regarding deduction of income tax from the bills of such contractors in terms of the provision as contained U/s 194C of I.T. Act along with specimen work orders, bills & vouchers, (4) specimen wages register of the construction site workers, site related labour returns (to the extent projection made), site labour related compliance under W.C. Act, 2023, salary statement of own salaried employees and (5) copies of P.F. paid challan & returns, when the respondents failed to supply the actual figure of employees or their salary slips.

5. Therefore, the order passed by the authority is correct and justified. Accordingly, the writ petition may be allowed and set aside the said impugned order.

6. Having heard the submissions made by the learned counsel; on perusal of the entire record including the order passed by the Authority on 09.05.2008 as well as order dated 02.09.2008, this Court comes to a conclusion that the order passed by the Tribunal is correct. Since the assessment was made without disclosing the details of the employees i.e., their number and salary etc., which is vital document to assess the amount as claimed by the EPF Authority.

7. The Tribunal also relied on a judgment passed in the case of **Satnam Singh Ahluwalia –vs.- The RPFC, EPFO & Ors.** in writ petition no. 2050/2005 on 15.05.2007, wherein the Hon'ble Court held as follows:-

> *"The authority was under an obligation to disclose the details of the employees i.e. their number, salary etc. In the impugned order the authority simply said that with respect to a large number of employees the establishment did not pay the statutory dues. It is not known who those employees are. And I think it cannot be said that the petitioner is wrong in expressing his grievance about the manner in which the authority saddled him with the liability for an unidentified, and unknown large number of employees. It has not been indicated which seized records the authority relied on. For whose benefit, and salaries of the beneficiaries, and to what extent the establishment was to be saddled with statutory liability, if any, none of these were indicated by the authority in the order. Counsel for the respondent has read out the whole order to me, and I have quoted hereinbefore what the authority recorded in support of this order. I am unable to agree with counsel for the respondent that the order can be treated as a reasoned one."*

8. Considering all the above facts and circumstances, the Tribunal has given an opportunity to the authority to assess afresh and for that case was remanded back to the respondent authorities to conduct fresh enquiry as well as identify the beneficiaries before assessing the P.F. dues, if any, against the appellants/respondents.

9. Therefore, this Court does not find any merit in the writ petition and accordingly calls for no interference.

10. The petitioner is given liberty to proceed in accordance with law.

11. In view of the above observations, the instant writ petition being WPA 21799 of 2009 is dismissed.

12. Interim order, if there be any, stands hereby vacated.

13. There shall be no order as to costs.

14. Parties to act upon the server copy and urgent photostat certified copy of this order be given on usual terms and conditions.

(Ajay Kumar Gupta, J.)

AMR