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THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT/EPF APPELLATE TRIBUNAL,
JABALPUR

NO. CGIT/LC/EPFA-38/2018

PRESENT: P.K.SRIVASTAVA
H.J.S.(Retd.)

Assembly of God English Medium School

APPELLANT

Versus

The Asst.Provident Fund Commissioner,
Jabalpur(M.P.)

RESPONDENT

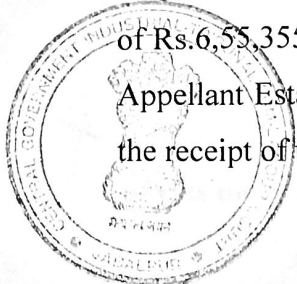
Shri BharatVerma : Learned Counsel for Appellant.

Shri J.K.Pillai : Learned Counsel for Respondent.

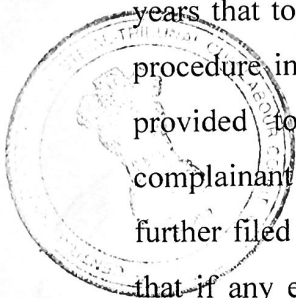
(J U D G M E N T)

(Passed on 17-6-22)

1. Under challenge in this appeal is order dated 24-9-2018 passed by the Respondent Authority under Section 7A of the Employees Provident Fund And Misc. Provisions Act,1952, herein after referred to the word Act”, whereby the Respondent Authority has held that the Appellant Establishment has defaulted payment of employees provident fund dues of some of its employees within the period August-2005 to March-2014 and as assessed the amount to the tune of Rs.6,55,355/-. The Respondent Authority has further directed the Appellant Establishment to deposit the amount within 15 days from the receipt of the impugned order.

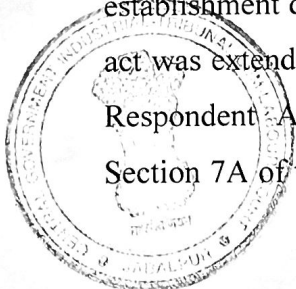


2. Facts connected in brief are mainly that according to the Appellant Establishment, it is a registered society under the Societies Act and has its own object and Rules according to which the Society functions. The society runs an educational institution in the name of Assembly of God, English Medium School. An anonymous complaint was made against the appellant establishment alleging that the appellant establishment is not according provident fund benefits to all its employees. The Respondent Authority issued a show cause notice to the Appellant Establishment on the basis of this anonymous complaint and directed to submit its reply. The Appellant Establishment submitted its reply on 31-5-2013 and submitting the details of its staff members whose employees provident fund dues were being regularly deposited by the Appellant Establishment and also those whose employees provident fund dues were not being paid. The Appellant Establishment further submitted an application before the Respondent Authority with a copy of the anonymous application on which show cause notice was issued by the Respondent Authority has not been provided to the appellant establishment along with the show cause notice and sought a copy of the complaint. The Enforcement Officer submitted his Inspection Report dated 21-3-2017 before the Respondent Authority. The Appellant Establishment had taken exception to the report with a stand that it was not maintainable because it was not prepared following the guidelines in this respect. The Appellant Establishment further filed an application on 30-6-2017 to quash the proceedings under Section 7A of the Act on the ground that the notices were issued after three years that to on an anonymous complaint without following proper procedure in this respect. No document relating to complaint was provided to the appellant establishment and identity of the complainant was also not established. The Appellant Establishment further filed an application before the Respondent Authority stating that if any employee is entitled to claim benefit in the Act which directs the identification of the of the person and gives his presence



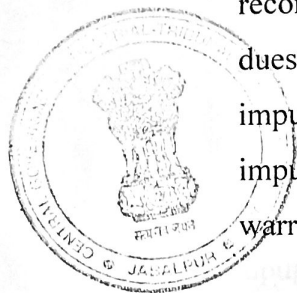
before the Respondent Authority, opportunity be given to the Appellant Establishment to examine that employee. The Appellant Establishment further filed a writ petition before Hon'ble High Court of M.P. at Jabalpur No.21051/2017. The Respondent Authority passed the impugned order under Appeal on 24-9-2018 during the pendency of the aforesaid writ petition. Therefore, the Appellant Establishment withdrew the petition. The grounds of Appeal taken in the memo of Appeal are mainly that the impugned order is bad in law because the inquiry was initiated on the basis of fake and false anonymous complaint without verifying the veracity of the complaint. Hence the whole inquiry is bad in law. The impugned order has been passed, inquiring this fact. The procedure adopted during the inquiry by the Respondent Authority is also against law because the attendance of the complainant has not been ensured during the inquiry and identification of the beneficiaries have also not been done before passing the impugned order. The alleged beneficiaries have not been impleaded as parties before the proceedings before the Respondent Authority, hence the cardinal principle of natural justice have not been followed during the inquiry. The Respondent Authority has wrongly believed the report of the Enforcement Officer without giving the appellant establishment an opportunity to cross-examine the Enforcement Officer on his Report. Further that the impugned order has been passed by the Respondent in utter violation of Section 7A(1)(b)(2)(3) of the Act. Officer submitted his report dated 21-3-2017 on the basis of records available by Appellant Establishment beforehand. Opportunities were given to the Appellant

3. In its counter/reply, the Respondent Authority has taken a stand that the impugned order of assessment done by the Respondent Authority for the period between April-2005 to March-2014 with respect to the 30 teaching staff working with the appellant establishment during the aforesaid period whereas the benefits of the act was extended to only six teachers. A complaint was made to the Respondent Authority in this respect. The proceedings under Section 7A of the Act was initiated and after detailed inquiry giving



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the appellant establishment an opportunity to have his say, the impugned order was passed. When it was verified that out of employees provident fund dues of Rs.12,22,133/- only amount of Rs.5,66,778 was deposited by the Appellant establishment, the amount of Rs.65,355 was assessed and the appellant establishment was directed to remit the amount by the impugned order. It is further the case of the Respondent that in the anonymous complaint dated 29-9-2012 received against the establishment by the Respondent Authority, it was alleged that there were 30 teachers in the school out of which only six have been extended the benefits of the Act. A verification was sought from the appellant establishment, who took a case that it was complying the provisions of the Act with respect to 14 employees only. A show cause notice was issued to the appellant establishment prior to initiating an inquiry under Section 7A by the Respondent Authority to submit reply to the notice with records. No reply to the said notice was filed by the Appellant Establishment within the time prescribed, hence a full-fledged inquiry under Section 7A of the Act was initiated. Summons were issued to the Appellant Establishment on 18-6-2013. The Appellant Establishment did not submit any reply to the notice nor did it submit any record before the Respondent Authority, hence the Respondent Authority directed the Enforcement Officer to make an inspection of the Appellant Establishment and submit its report after calculating the outstanding dues on the basis of available record. The Enforcement Officer submitted his report dated 21-3-2017 on the basis of records available by Appellant Establishment beforehand. Opportunities were given to the Appellant Establishment to dispute the report but the appellant establishment filed an affidavit with it that it did not have the complete salary records, hence the Respondent Authority proceeded to assess the dues on the basis of Audit Report and Other returns and passed the impugned order. Thus according to the Respondent Authority the impugned order is fully justified in law and fact and does not warrant any interference.



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4. The Appellant has filed a rejoinder, wherein it has mainly reiterated its case.

5. I have heard arguments of Mr. Bharat Verma , learned counsel for the Appellant Establishment and Shri J.K.Pillai, learned counsel for the Respondent Authority. I have gone through the records as well.

6. On perusal of the record in the light of the rival arguments, the following point comes up for determination in the present appeal.

(1)Whether the finding of the Respondent Authority regarding default in payment of employees provident fund dues of its employees done by the Appellant Establishment within the period of April-2005 to March-2014 and assessment can be faulted in law and fact?

7. **POINT FOR DETERMINATION NO.1:-**

The learned counsel for appellant has assailed the impugned finding of assessment mainly on the following grounds:-

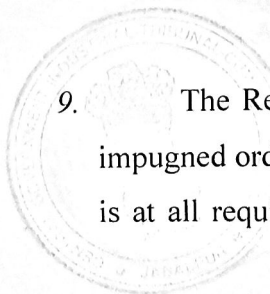
(1)The complaint was anonymous. The Complainant never appeared. Notices were issued without verifying the complaint and the complainant and without following the guidelines in this respect.

(2)The Appellant Establishment was not accorded opportunity to examine the Enforcement Officer on his report.

(3) The alleged beneficiaries were not identified and were not impleaded as party.

8. The whole inquiry proceedings under Section 7A of the Act were not legally conducted.

9. The Respondent Authority has dealt with these grounds in the impugned order and has recorded the finding that no formal complaint is at all required to initiate an inquiry under Section 7A of the Act.



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The inquiry was initiated on the basis of anonymous complaint containing verifiable facts, after it was found that the appellant establishment was not complying with the provisions of the Act in to to with all of its employees. This is also mentioned in the impugned order that before initiating inquiry under Section 7A, the Appellant Establishment was provided with an opportunity to present its side with relevant records. The request of the Appellant Establishment for time was also considered. It is the appellant establishment which failed to produce any complete record and also admitted vide letter dated 31-5-2013 regarding the non-compliance of the Act, vide its letter to the Respondent Authority in response of the notice. It was clear in the aforesaid reply of the Appellant establishment that the employee's provident fund dues of all its employees mentioned in the list produced before the appellant establishment before the Respondent Authority with its letter dated 31-5-2013 were not deposited. Hence, a prima facie case for inquiry was found. This statement of factual position is not disputed between the parties. Section 7A of the Act requires to be reproduced as follows:-

[7A. Determination of moneys due from employers. –

s[(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 1[Pension] Scheme 2[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;

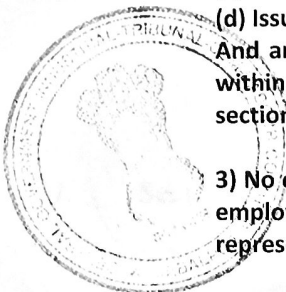
(b) Requiring the discovery and production of documents;

(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 section 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860).

3) No order 1[***] shall be made under sub-section (1), unless 2[the employer concerned] is given a reasonable opportunity of representing his case.



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3[(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 employers, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

4[(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 aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.].

10. In this connection Section 3a and 3b of the act are also being produced as follows:

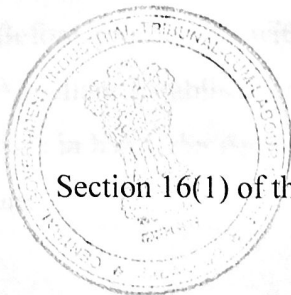
[(3) Subject to the provisions contained in section 16, it applies-

(a) To every establishment which is a factory engaged in any industry specified in Schedule I and in which [Twenty] or more persons are employed, and

(b) To any other establishment employing 1[twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provident that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than 1[twenty] as may be specified in the notification.]

11. Section 16(1) of the Act is also being reproduced as follows:-



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16. Act not to apply to certain establishment. –

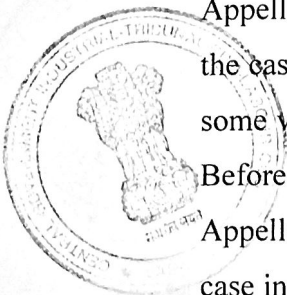
[(1) This Act shall not apply-

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies employing less than fifty persons and working without the aid of power; or

[(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefits; or

(b) To any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance With any scheme or rule framed under that Act governing such benefits; 1[**]

12. Perusal of these provisions establish that a formal complaint is not *sin qua non* for initiation of inquiry. Hence the case of the appellant establishment that the complainant in the anonymous complaint was not traced and was not examined before initiating an inquiry has no leg to stand and the finding of the Respondent Authority on this point cannot be faulted in law. As regards non-compliance of certain directions, the Respondent Authority has clearly held that they are administrative directions. The proceedings is quasi-judicial proceedings, hence they carry no weight with regard to quasi-judicial proceedings. The Respondent Authority has further held that these are general guidelines to be applicable according to facts and circumstances. The guidelines mentioned by the Appellant Establishment appear to be general departmental guidelines regarding instituting an inquiry. The non-observance of these guidelines may render the proceedings irregular but not illegal unless, it is established from evidence on record that the case of Appellant has been prejudiced by non-observing the guidelines. In the case in hand, when it was established from record that there was some violation of Act, the inquiry under Section 7A was proceeded. Before proceeding with the inquiry, information was given to the Appellant Establishment and it did submit its response, hence in the case in hand, the Appellant Establishment has failed to establish that any prejudice was caused to him by non-observance of any of the



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departmental circular as mentioned by the appellant establishment to the Respondent Authority and this leg of argument by learned counsel for the appellant also has no ground to stand. The action of the Respondent Authority on this point also cannot be faulted in law or fact.

13. As regards the third argument from the side of the appellant that beneficiaries were not identified before assessment. The report of the Enforcement Officer clearly states that full list of the employees were not produced. According to the report of the Enforcement Officer in the Audit Report for 2007-2008, salary register from 2005-2006 to 2010-2011 ECR for 2012-2013 and 2013-2014, copy of form 6A and reconciliation from 2005-06 to 2011-12 were not produced before the Enforcement Officer inspite of demand. It was on 28-2-2017, copy of Audit Report of 2007-08 were filed by the Appellant Establishment and dues deposition report dated 21-3-2017 was also filed by the Enforcement Officer based on available records. No record was filed thereafter by Appellant Establishment before the Respondent Authority during the inquiry. Since salary records were not produced, the beneficiaries could not be identified at that stage but since there was discrepancy in payment of wages, the Audit Report and Form 6A which was mentioned in the report of Enforcement Officer in detail, the default in depositing employees provident fund dues was evident, hence the finding regarding default is also held is justified in law and fact along with the assessment as recorded by a the Respondent Authority in the impugned order and non-identifiable of beneficiaries during the inquiry under Section 7A does not render the finding regarding default and assessment illegal. Hence, finding of Respondent Authority on this point also cannot be faulted in law and is affirmed.



14. In the light of the above discussion, **Point for determination No.1 is answered against the Appellant.**

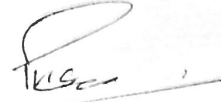
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15. On the basis of the above discussion the appeal lacks merits and is liable to be dismissed.

ORDER

Appeal stands dismissed.

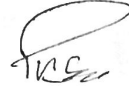
No orders as to costs.



(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.



(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:17-6-2022

