

(1999) 01 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4245 of 1998

Lalsons Cold Storage and Others

APPELLANT

Vs

Regional Provident Fund

Commissioner for States of
Punjab, Himachal Pradesh and
U.T. Chandigarh

RESPONDENT

Date of Decision: Jan. 29, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 7D

Citation: (1999) 122 PLR 10

Hon'ble Judges: V.K. Bali, J; B. Rai, J

Bench: Division Bench

Advocate: M.J.S. Sethi and Amit Sethi, for the Appellant; Kamal Sehgal, for the
Respondent

Judgement

@JUDGMENTTAG-ORDER

V.K. Bali, J.

M/s Lalsons Cold Storage through present petition filed by them under Article 226 of the Constitution of India seek issuance of writ in the nature of certiorari so as to quash order dated 11.12.1997 passed by the Regional Provident Fund Commissioner for the State of Punjab, Himachal Pradesh and U.T. Chandigarh. Vide impugned order the Regional Provident Fund Commissioner in exercise of the powers conferred upon him u/s 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter to be referred to as the Act) has held that the petitioners have rightly been covered under the Act aforesaid w.e.f. 10.10.1998 and accordingly amount of Rs. 1,60,140/- details whereof have been given in the order itself is payable in relation to the petitioner. The whole case of the petitioner before

the respondent has been that the Act aforesaid is not applicable to the petitioner's establishment as number of employees provided by the contractors are not more than 12 including regular employees. Relying upon verification of Shri Subhash Chand Area E.O. who had verified the records, respondent came to the conclusion that the petitioners' establishment was covered under the Act. On merits, the primary and in fact, the only contention of the learned counsel representing the petitioner based on various facts and circumstances of the case has been that the finding of fact with regard to number of employees recorded by the Regional Provident Fund Commissioner is incorrect and, therefore, the impugned order deserves to be set aside.

2. On the other hand, the Counsel representing the respondent has raised a Preliminary Objection that against the impugned order, statute provides an appeal and therefore, the petitioner should be relegated to an ordinary remedy provided to it under the statute. Mr. Sethi, learned Senior counsel who represents the petitioner had brought to our notice that the Appellate Tribunal had not been constituted by the Government u/s 7D of the Act and, therefore, there was no question of filing an appeal. The respondent Shri S.K. Aggarwal, Regional Provident Fund Commissioner has filed an affidavit on 14.12.1998 wherein it has been stated that the Employees Provident Appellate Tribunal was constituted by the Government of India u/s 7D of the Employees Provident Fund Act and is functioning at New Delhi and the appeals against the orders passed by any Authority u/s 7A, 7B, 7C and 14B and other relevant sections are being entertained and decided by the Tribunal. The Tribunal was constituted in June, 1997 and is functioning from that date. The Appellate Tribunal is being headed by Shri S.N. Singh and its office is situated at 60, Nehru Place, New Delhi. The present petition was filed in this Court in February, 1998. At the time when this petition was filed, it is, thus, clear that the Appellate Tribunal had not only been constituted but was actually functioning.

3. Confronted with this situation, Mr. Sethi, learned counsel representing the petitioner vehemently contends that irrespective of availability of an appeal under the Statute, the petitioner was well within its right to challenge the order in this Court as availability of an appeal under the statute is not an absolute bar for entertaining a writ under Article 226 of the Constitution of India. For his aforesaid contention, learned counsel has cited a number of judgments like Ram and Shyam Company Vs. State of Haryana and Others, ; Prem Chand Ram Lal Vs. The State of Punjab and Others, ; New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others, ; The Deputy Commissioner of Endowments, Hyderabad and 2 others Vs. Saibaba Samsthanam, and Commissioner of Police, Bombay Vs. Gordhandas Bhanji, .

4. There is no need to give a definite finding on the aforesaid contention of the learned counsel and suffice it to say that it may be true that alternative remedy may not in all circumstances bar entertaining of a writ by this Court under Article 226 of

the Constitution of India but in the present case, we are of the view that no exceptional circumstances exist that may be sufficient for the petitioner to file a writ in this Court against the impugned order and not an appeal. On merits, as referred to above, the arguments are such that need determination of fact. It is, thus, not a case where vires of statute as such might have been challenged or that the order per se may be without jurisdiction. The mere fact that while filing the appeal, the concerned party has to deposit the amount of as ordered by the Regional Provident Fund Commissioner would not in itself be enough to hold that the remedy of appeal as available to a citizen should not first be exhausted. Surely, there are provisions under the Act where the Regional Provident Fund Commissioner can entertain applications for stay and grant it as well.

5. In view of what we have said above, we are of the view that the petitioner be relegated to his ordinary remedy of appeal. So ordered. In peculiar facts and circumstances of this case, we further order that if the petitioner files an appeal within 15 days from today, no objection with regard to limitation shall be raised by the respondents. The petition stands disposed of accordingly.