

(2002) 12 AHC CK 0148

Allahabad High Court

Case No: Special Appeal No. 1278 of 2002

P.G.T. Components
(P.) Ltd. and Others

APPELLANT

Vs

Assistant Provident
Fund Commissioner
and Another

RESPONDENT

Date of Decision: Dec. 3, 2002

Acts Referred:

- Allahabad High Court Rules, 1952 - Rule 5

Citation: (2003) 1 AWC 508 : (2003) 96 FLR 473 : (2003) 1 LLJ 1033

Hon'ble Judges: S.P. Srivastava, J; M.P. Singh, J

Bench: Division Bench

Advocate: K.S. Ojha and Chandra Kumar Rai, for the Appellant; G.L. Tripathi, for the Respondent

Final Decision: Dismissed

Judgement

S. P. Srivastava and M. P. Singh, JJ.

Heard the learned counsel for the appellants as well as the learned counsel representing the respondent authorities.

2. A preliminary objection has been raised by the learned counsel for the respondents challenging the maintainability of this appeal asserting that the order, which was the subject matter of the writ petition disposed of by the learned single Judge vide the impugned order dated 26.10.2002, was an order passed by a Tribunal, therefore, as provided in Chapter VIII Rule 5 of the Rules of the Court, no special appeal could lie against such an order.

3. A perusal of the various provisions of the Employees Provident Funds and Misc. Provisions Act, 1952, indicates that under the Scheme of the Act, the Provident Fund

Commissioner while discharging its duties under the Act has not been vested with any trappings of the Court. At the most, he can be taken to be a Tribunal. The learned counsel for the appellant has not been able to point out any such feature which may lead to an inference that while discharging the duties under the Act the Provident Fund Commissioner can be taken to be a Court.

4. It may further be noticed at this stage that a Division Bench of this Court in its decision in the case of Special Appeal No. 567 of 1994, *India Thermit Corporation Ltd. v. Regional Provident Fund Commissioner* and orders, decided on 23.3.1994, following the earlier decision of another Division Bench in Writ Petition No. 3503 of 1981, *India Thermit Corporation Ltd. v. Regional Provident Fund Commissioner, U. P.*, decided on 5.11.1981 had observed that the Regional Provident Fund Commissioner functions as a Tribunal while discharging the duties under the provisions of the said Act.

5. Learned counsel for the appellants has not been able to demonstrate that the status of a Provident Fund Commissioner while discharging the duties envisaged under the Provident Fund Act is that of a Tribunal and not of a Court.

6. In the aforesaid view of the matter, the appeal is clearly not maintainable. The preliminary objection is sustainable in law.

7. However, even on merits, a perusal of the memo of appeal, specially ground No. 2, makes it apparent that the appellants are not disputing the applicability of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. In fact, as noticed by the learned single Judge in the impugned order, the petitioners did not challenge the applicability of the Act to their establishment since they themselves have been claiming that they were depositing the Provident Fund earlier.

8. In the aforesaid view of the matter, the learned single Judge did not find fault with that part of the order passed by the learned Provident Fund Commissioner so far as it closed the proceedings regarding applicability of the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, to the establishment of the present appellants. So far as the other part of the order of the Commissioner is concerned, the learned single Judge has left it open to the petitioners-appellants to raise all submissions including bringing on the record the documentary evidence before the concerned authority. Therefore, while determining the extent of liability, the concerned authority will have to take into consideration the evidence and the materials brought on record by the present appellants in support of its defence raised in opposition to the notice in question.

9. Taking into consideration the facts and circumstances as brought on record including the fact that the interest of the present appellants has been amply protected, we are not inclined to interfere in the discretion exercised by the learned single Judge.

10. This special appeal, consequently, fails and is dismissed in limine.