

(2008) 11 AHC CK 0177**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 60547 of 2008

Vishwanath Prasad Seth" Cold
Storage

APPELLANT

Vs

Regional Provident Fund
Commissioner, Varanasi and
others

RESPONDENT**Date of Decision:** Nov. 28, 2008**Acts Referred:**

- Constitution of India, 1950 - Article 226

Citation: (2009) 120 FLR 387**Hon'ble Judges:** S.P. Mehrotra, J**Bench:** Single Bench**Advocate:** Shakeel Ahmad, for the Appellant; Dhananjay Awasthi and S.C., for the Respondent**Final Decision:** Disposed Of**Judgement**

S.P. Mehrotra, J.

The present Writ petition has been filed under Article 226 of the Constitution of India, inter alia, praying for issuance of writ of mandamus directing the respondent Nos. 1, 2 and 3 not to recover the amount of Rs. 3,94,426/- as demanded from the petitioner under the Employees" Provident Funds and Miscellaneous Provisions Act, 1952 (in short "the Act").

It appears that a recovery certificate dated 4.4.2008 has been issued by the Regional Provident Fund Commissioner, Varanasi to the Recovery Officer, Varanasi. Copy of the said recovery certificate has been filed as Annexure-5 to the Writ petition.

2. A perusal of the said recovery certificate shows that the same has been issued for recovery of Rs. 3,94,426/- in respect of provident fund and interest on account of delayed deposit u/s 7-Q of the Act.

Shri Dhananjay Awasthi, learned counsel for the respondent No. 1 was given time to obtain instructions in the matter.

3. Today, on instructions received by Shri Dhananjay Awasthi, he has stated that the said recovery certificate dated 4.4.2008 has been issued pursuant to an order dated 31.5.2007 passed u/s 7-A of the Act by the Assistant Provident Fund Commissioner, Varanasi.

Shri Dhananjay Awasthi has produced before the Court a copy of the said order dated 31.5.2007. A copy of the said order dated 31.5.2007 has also been provided to Shri Shakeel Ahmad, learned counsel for the petitioner.

Shri Shakeel Ahmad, learned counsel for the petitioner states that as the said order dated 31.5.2007 has been passed against the petitioner ex-parte, the petitioner has an alternative remedy available to him under Sub-section (4) of section 7-A of the Act, and in the circumstances, the petitioner will file an application for setting aside the said order dated 31.5.2007. Shri Shakeel Ahmad further states that such an application will be filed before the respondent No. 1 within five weeks from today, and he prays that the respondent No. 1 may be directed for deciding the same expeditiously.

4. In view of the above, I am of the opinion that it is not necessary to call for any counter affidavit from the respondents as the interest of justice would be subserved by disposing of the Writ petition with the following directions:

1. Within four weeks from today, the petitioner will deposit Rs. 2,10,924/- with the respondent No. 1.

2. The petitioner will file an Application under Sub-section (4) of section 7- A of the Act before the respondent No. 1 within five weeks from today. Alongwith the said application, the petitioner will submit receipt regarding the deposit made by the petitioner, as mentioned in the direction No. 1 above, and a certified copy of this order.

3. In case, such an application is made with the documents mentioned above within the aforesaid period, the respondent No. 1 will not raise any objection regarding the question of limitation and will proceed to decide the application on merits expeditiously preferably within a period of three weeks from the date of receipt of such application.

4. For a period of nine weeks from today or till the disposal of the aforesaid application to be filed by the petitioner, whichever is earlier, the recovery proceedings pursuant to the recovery certificate dated 4.4.2008 (Annexure-5 to the Writ petition) shall remain stayed.

5. In the event of default on the part of the petitioner in complying with any of the aforesaid conditions, the interim order granted above staying the recovery

proceedings shall stand vacated automatically and the direction for disposing of the application to be filed by the petitioner will become inoperative.

6. The Writ petition is accordingly disposed of with the above directions.

It is made clear that this Court has not adjudicated the claim of the petitioner on merits.

Certified copy of this order will be supplied to the learned counsel for the petitioner on payment of usual charges by 2.12.2008.