

(2009) 11 JH CK 0007

Jharkhand High Court

Case No: None

Hotel Arihant Private Limited

APPELLANT

Vs

The Union of India (UOI),
Regional Provident Fund
Commissioner and Assistant
Provident Fund Commissioner

RESPONDENT

Date of Decision: Nov. 19, 2009

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 7A, 7B

Citation: (2010) 4 LLJ 269

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.G.R. Patnaik, J.

Heard counsel for the parties.

2. The petitioner in this writ application, has prayed for quashing the order dated 25.11.2004 (Annexure-9) passed by the Respondent No. 3, whereby the Review Application filed by the petitioner against the earlier order dated 10.11.2003 (Annexure-6), was dismissed on merits.

3. Petitioner is the owner of a hotel establishment. The Enforcement Officer of the Employee's Provident Fund, had visited the hotel establishment and had demanded the relevant registers pertaining to the employees of the establishment. The person incharge of the hotel management, had produced the salary register and on perusal, the Enforcement Officer had observed that the establishment had employed more than ten employees. It also appears that a written declaration was given by the representative of the owner of the establishment acknowledging therein that the total number of employees employed were twenty.

4. On the basis of the above acknowledgment, and on the basis of the inference drawn from the salary register, the Enforcement Officer had issued notice directing the petitioner to appear before him for the purposes of assessing the amount payable by the petitioner establishment towards the P.F. contribution of its employees.

5. The petitioner contested the order by filing the writ application before this Court. The writ application was dismissed with an observation that the petitioner should avail the alternative remedy of appeal. Pursuant to the order of this Court, the petitioner preferred a Review Application against the order impugned in the writ application before the concerned officer. After conducting an inquiry as envisaged u/s 7A of the Act and upon considering the submissions made on behalf of the petitioner, the concerned officer recorded his finding that there is no material for reviewing the earlier order and on such finding, dismissed the Review Application on merits.

6. Against this order of dismissal, the petitioner has now approached this Court by filing the instant writ application.

7. Learned Counsel for the petitioner, while assailing the impugned order, would submit that the impugned order of dismissal of the petitioner's review application appears to have been passed by way of a pre-conceived mind and without appreciating the evidences adduced by the petitioner on record in the inquiry proceeding. Learned Counsel argues that the fact that the notice u/s 7A issued to the petitioner ipso facto indicates that the concerned officer did not place reliance upon the purported admission of the employer that the Act applies to the establishment. Rather, the concerned officer by issuance of notice u/s 7A of the Act, had obviously intended to decide on the dispute as to whether the act in fact, applies to the establishment or not and only after deciding this issue, the question would arise for determination of the amount payable by the establishment towards the employer's contribution under the Act.

8. Referring to the impugned order, learned Counsel submits that as would be apparent from the order itself, the Reviewing Authority has placed reliance on the purported admission made on behalf of the establishment without considering the fact that though, the petitioner had adduced specific evidence to confirm that the number of employees employed at any point of time was less than 10 persons, but the same was not looked into at all and no discussion on the evidence adduced by the petitioner was made by the concerned authority while passing the original impugned order.

9. Per Contra, the stand taken by the learned Counsel for the respondents is that the present writ application is not maintainable, in view of the fact that an alternative remedy of statutory appeal is provided under the Act which the petitioner ought to have availed instead of preferring the present writ application.

Referring to Sub-section 5 of Section 7B of the Act, learned Counsel would inform that the provisions under the aforesaid sub-section provide an alternative remedy of appeal against an order passed under review as if the order passed under review were the original order passed by him u/s 7A of the Act. Learned Counsel argues that the review application was dismissed on merits of the case and it is not a case where the review application was outrightly rejected by the concerned officer.

10. In support of his contention, learned Counsel would refer to and rely upon a Division Bench Judgment of this Court passed in the case of Dr. Devendra Singh v. The Employees Provident Funds Organization, Main Road, Ranchi and Ors. LPA No. 762 of 2004.:

11. An identical issue, as raised in the present writ application, came up for, consideration before the Division Bench of this Court in the case of Dr. Devendra Singh (Supra). The appellant in the aforesaid case had challenged the order passed u/s 7A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952, by preferring a review u/s 7B of the Act. Though, the review application was entertained, but was dismissed on merits by the impugned judgment against which, the writ petitioner had filed the writ application. The Division Bench upon interpreting the provisions of Sub-section 5 of Section 7B of the Act, had observed that as the authority concerned had entertained the application for review and passed final order in the said review application on merit, an appeal under the aforesaid provision lies, as the order passed under review shall be treated as if the original order passed by the authority u/s 7A of the Act. The Court had held in the following terms:

There being alternative remedy available to the appellant, we are not inclined to interfere with the order impugned. This appeal is accordingly, dismissed.

12. The ratio as decided by the Division Bench of this Court in the case of Dr. Devendra Singh (Supra) would squarely apply to the facts of the present case. Accordingly, this application is dismissed, on the ground that an alternative remedy of appeal is available to the petitioner and he should avail the remedy. This application therefore, cannot be entertained. It is therefore dismissed with liberty to the petitioner to avail the alternative remedy.