

(2009) 07 JH CK 0023

Jharkhand High Court

Case No: Writ Petition No. 1023 of 2009 With I.A. No. 779 of 2009

Dorabji Auto, Singhbhum (East)

APPELLANT

Vs

Employees' Provident Fund
Organisation, Ranchi and
another

RESPONDENT

Date of Decision: July 1, 2009

Acts Referred:

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

Citation: (2009) 123 FLR 928

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Advocate: Praveen Kumar, for the Appellant; S.K. Sahay, for the Respondent

Judgement

D.N. Patel, J.

The present petition has been preferred mainly against an order passed by respondent No. 2 dated December 15, 2008, in a proceeding u/s 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter to be referred as "the Act, 1951"), which is at Annexure 5 to the memo of petition.

2. It is submitted by the learned Counsel for the petitioner that respondent No. 2 has passed the aforesaid order, without giving adequate opportunity of being heard to the petitioner and though the report given by the department, has been relied upon by the said officer, never a copy of the same was given to the present petitioner and, therefore, the petitioner is not knowing what is the report, given by the department to respondent No. 2 and respondent No. 2 has passed the impugned order at Annexure 5 to the memo of petition, based upon the said secret report. It is also submitted by the learned Counsel for the petitioner that there is a gross violation of the principles of natural justice and, therefore, even in appeal also

the same ground will be continued and the matter will have to be remanded to respondent No. 2 and, therefore, to save the time and cost, this writ petition has been preferred, so that the impugned order may be quashed and the matter may be remanded to respondent No. 2 and a fresh order may be passed by respondent No. 2, after giving copies of the documents, which may be relied upon by respondent No. 2. It is also submitted by the learned Counsel for the petitioner that all the dues have now been paid by the Tata Motors Limited.

I have heard learned Counsel for the respondents, who has submitted that the dues of the provident fund have not been paid by the petitioner and, therefore, after holding enquiry, an order has been passed u/s 7-A of the Act, 1952, which is at Annexure 5 to the memo of petition, and the report given by the department, has been relied upon by the respondent No. 2.

3. Pursuant to the order dated April 27, 2009, passed by this Court, respondent No. 2, Guru Dayal Singh son of Mahendra Singh, Assistant Provident Fund Commissioner, Sub Regional Office, Purulia Highway, P.O. Azadnagar, Mango, P.S. Mango, Jamshedpur, Singhbhum (East), is present before this Court. It is submitted by him that copy of the report, which is referred in the impugned order, collected by him from the department, was never given to the petitioner and the whole order is based upon the said report.

4. In view of the aforesaid facts, I hereby quash and set aside the order dated December 15, 2008, passed by respondent No. 2 u/s 7-A of the Act, 1952, which is at Annexure 5 to the memo of petition, mainly for the reasons that copy of the document, upon which reliance was placed by respondent No. 2, was never supplied to the petitioner and, therefore, even though the impugned order is an appealable order, by the Appellate Authority also under Act, 1952, if the matter is to be remanded, I am not inclined to dismiss this writ petition, only on the ground of availability of the efficacious alternative remedy. Looking to the peculiar facts of the present case, in exercise of the powers under Article 226 of the Constitution of India, I hereby allow this writ petition and quash the impugned order dated December 15, 2008, passed by respondent No. 2, which is at Annexure 5 to the memo of petition, mainly on the ground that there is a gross violation of the principles of natural justice and I hereby remand the matter for a fresh decision by respondent No. 2. Respondent No. 2 shall supply the copies of the documents, upon which he will be relying upon, to the petitioner and after giving an adequate opportunity of being heard to the petitioner, fresh order will be passed by respondent No. 2 u/s 7-A of the Act, 1952.

5. Rest of the contentions, raised by the petitioner in the memo of present petition, including the amount said to have already been paid by the Tata Motors Limited, are left open to be decided by the concerned respondent authority.

6. This writ petition is, accordingly disposed of with the aforesaid direction and liberty to respondent No. 2.

I.A. No. 779 of 2009:

1. In view of the aforesaid final order, passed in the writ petition, I.A. No. 779 of 2009 is also disposed of accordingly.