

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD**

**W.P.No.11475 OF 2015**

**Between:**

Central Board of Trustees,  
Employees Provident Fund

**... Petitioner**

**And**

Employees Provident Fund Appellate Tribunal  
& another

**... Respondents**

JUDGMENT PRONOUNCED ON: 26.02.2024

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. **Whether Reporters of Local newspapers may be allowed to see the Judgment?** : Yes
2. **Whether the copies of judgment may be marked to Law Reporters/Journals?** : Yes
3. **Whether Their Lordships wish to see the fair copy of the Judgment?** : Yes

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**SUREPALLI NANDA, J**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P.No.11475 OF 2015****% 26.02.2024****Between:**# Central Board of Trustees,  
Employees Provident Fund**... Petitioner****And**\$ Employees Provident Fund Appellate Tribunal  
& another**... Respondents****< Gist:****> Head Note:****! Counsel for the Petitioner** : Mr.R.N.Reddy**^ Counsel for Respondents** : Mr.G.Ravi Mohan  
Ld.Senior Counsel**? Cases Referred:**

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**HON'BLE MRS JUSTICE SUREPALLI NANDA****WRIT PETITION No.11475 OF 2015****ORDER:**

Heard Mr.R.N.Reddy, the learned counsel appearing on behalf of the petitioner, Mr.G.Ravi Mohan, learned Senior Designated Counsel appearing on behalf of the 2<sup>nd</sup> respondent.

**2. PRAYER:**

**The petitioner approached the court seeking prayer as under:**

"To issue Writ, Order, or Direction more particularly one in the nature of Writ of Certiorari calling for the records relating to the order dated 20.11.2014 passed in ATA No. 349(1)2010 by the 1<sup>st</sup> respondent Tribunal and quash the same as illegal and unjust and in consequence direct the 2<sup>nd</sup> respondent to pay the dues assessed by the petitioner through order dated 30.04.2010 u/S 7B of the Act."

**3. PERUSED THE RECORD.**

**a) The relevant portion of the order impugned dated 20.11.2014 passed in ATA No.349 (1) of 2010 on the file of Employees Provident Funds Appellate Tribunal, New Delhi, reads as under:**

"19. The learned counsel for the respondent strongly opposed the arguments of the counsel for appellant and contended that the burden lies on the appellant to produce the records and to satisfy the contention raised by the respondent. In absence of these documents the respondent rightly came to the conclusion and passed order. He further stated that the judgment referred by the counsel for appellant is no relevancy of facts.

20. After considering the material available on records and after pursuing the judgment referred by the counsel for appellant, it is found that the respondent authority while passing the order has not exercised the jurisdiction properly which is vested on it and failed to consider the documents, records and register which were in the custody of the respondent herein. The findings of the respondent in coming to the conclusion that the applicability of the appellant company with retrospective effect w.e.f., 1992-93 is without any reason and without there being any evidence on record. The respondent has not filed any documents to show that there were 30 employees for the year 1992-93 and the said finding is vague and without any material on record.

21. After going through the letters of the appellant dated: 10.06.2003 and 22.05.2008, which shows that the respondent received the required documents such as Attendance register, wages register, salary slip and order of Hon'ble Labour Court in Rajkumar, Abdul Basith and Premraj which were received by one Janardhan Rao and

R.Sridevi on 10.06.2003 and on 22.05.2008. All together about 17 documents were received by the respondent authority, but the respondent authority not even whispered nor gave any finding in respect to documents received by the respondent in impugned order. Moreover the respondent alleges that the appellant has not produced documents such as voucher for wages and salary for the relevant period is incorrect. The order of the Hon'ble High Court was in W.P.No. 6456/2009 were very clear that the respondent should pass an order basing upon the documentary evidence which were available on the said date. Admittedly in the present case the respondent has received the documents from the appellant pertaining to the alleged period on two different occasions. But there is no finding in the impugned order as per the orders passed by the Hon'ble High Court.

22. In view of the above discussion, the order passed by the respondent under Section 7-A and the order passed under Section 7-B of the Act are set aside and the appeal is allowed. Copy of the order be sent to both parties. File be consigned to the record room.

**b) The counter affidavit filed by the 2<sup>nd</sup> respondent, in particular, paras 4, 5, 7 to 10, read as under:**

4) It is respectfully submitted that the 2<sup>nd</sup> Respondent company was established in the year 1991 with 8 employees started in premises admeasuring about 200 Sq. ft. The 2<sup>nd</sup> Respondent acquired his own premises in the

year 1998. Since inception of the company it has been maintaining the attendance, wages register etc.

5) It is submitted that, the Petitioner's officials visited the 2<sup>nd</sup> Respondent shop for the first time on 22-01-2003 and after verification of the records they directed the 2<sup>nd</sup> Respondent to pay an amount of Rs. 16,775/-, and accordingly the same was paid. And therefore again the petitioner issued a letter dated 11-02-2003 making applicability of the 2<sup>nd</sup> Respondent unit under E.P.F. Act. 1952, and allotted a number AP/HYD/43918. In spite of producing the relevant records an order was passed dated 17-02-2004 in respect to applicability of the Act. Aggrieved by the said order dated 17-02-2004, the 2<sup>nd</sup> Respondent filed an appeal to the appellate Tribunal at Delhi. To the 2<sup>nd</sup> Respondent unfortunate there was a fire accident at Tribunal and finally the Hon'ble Tribunal dismissed the appeal for default. Aggrieved by the same, the 2<sup>nd</sup> Respondent herein filed W.P.No. 6456/2009, before this Hon'ble Court an order dated 26-03-2009 setting aside the order and remanded the matter to the petitioner to consider as was passed by the 2<sup>nd</sup> Respondent case basing upon the records available. It is submitted that during the pendency of the said proceedings the petitioner recovered an amount of 12,39,219/-. The petitioner herein passed a final order dated 30-04-2010 directed the 2<sup>nd</sup> Respondent to pay a sum of Rs. 24,77,779/- after deducting the amount paid.

7) It is submitted that, the orders passed by the Hon'ble 1<sup>st</sup> respondent is absolutely basing upon evidence and the documents available.

8) It is submitted that, for implementation of social welfare enactment the petitioner here cannot deprived legible rights which are entitle by the 2<sup>nd</sup> Respondent.

9) It is submitted that, there is a categorical finding that the petitioner herein have received the required documents such as wage Register, attendance register and salary slips and other relevant documents all put together 17 documents by the petitioner's officials therefore having received the said documents the petitioner's cannot alleged that this respondent has failed to submit the documents.

10) It is submitted that, the petitioner has not produced any evidence to take the 2<sup>nd</sup> Respondent Company into the fold of P.F. Act. w.e.f. 1992-1993.

**4. The case of the petitioner in brief as per the averments made in the affidavit filed in support of the present writ petition.**

a) The 2<sup>nd</sup> respondent is covered under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 vide Code No.AP/43198. The 2<sup>nd</sup> respondent failed to pay the dues for the period from 1992-93 to 2005-06. Therefore, an

enquiry under Section 7A of the Act had been initiated and dues were assessed through order dated 16.12.2008.

b) It is further the case of the petitioner that the 2<sup>nd</sup> respondent filed a review application and the same had been rejected through order dated 16.03.2009 and that the 2<sup>nd</sup> respondent filed writ petition No.6456 of 2009 and the same was disposed off on 26.03.2009 remanding the case to the reviewing authority under Section 7B of the Act. The petitioner had enquired into the matter under Section 7B of the Act and passed order dated 30.04.2010 confirming the order dated 16.12.2008 passed under Section 7A of the Act and that 2<sup>nd</sup> respondent questioned the same before the 1<sup>st</sup> Respondent Tribunal in Appeal ATA No.349 (1) of 2010. And that the 1<sup>st</sup> respondent erroneously allowed the appeal through the order dated 20.11.2014. Aggrieved by the same, the petitioner approached the Court by filing the present writ petition.

**5. The learned counsel appearing on behalf of the petitioner mainly puts forth the following contentions:**

- (i) The 1<sup>st</sup> respondent failed to consider that the 2<sup>nd</sup> respondent failed to submit any proof (like the salary vouchers, wage registers) in support of 2<sup>nd</sup> respondent's



contention that the salaries and wages reflected in profit and loss account and further that they pertain to the excluded employees, either before the primary authority or before the review authority or before the 1<sup>st</sup> respondent and thus, erred in allowing the appeal.

(ii) The 1<sup>st</sup> respondent failed to consider that the orders like the impugned order dated 20.11.2014 will make the implementation of a social welfare enactment impossible.

(iii) The order passed under 7B is as per the law and basing on the documents and therefore the 1<sup>st</sup> respondent ought not have interfered with the said order passed under Section 7B, whereunder the dues to the tune of Rs.24,77,779/- had been assessed vide order dated 30.04.2010.

(iv) The competent authority rightly passed the order dated 30.04.2010 based on the income tax returns of the 2<sup>nd</sup> respondent herein and that the 2<sup>nd</sup> respondent had not filed any documents for the alleged period.

(v) The order impugned dated 20.11.2014 passed in ATA No.349 (1) of 2010 by the 1<sup>st</sup> Respondent Tribunal should

be quashed and the 2<sup>nd</sup> respondent should be directed to pay the dues assessed through order dated 30.04.2010 under Section 7B of the Act.

**Based on the aforesaid submissions, the learned counsel for the petitioner contended that the writ petition should be allowed as prayed for.**

**6. The learned counsel appearing on behalf of the 2<sup>nd</sup> respondent placing reliance on the counter filed in the present writ petition mainly puts forth the following submissions:**

(i) The orders passed by the 1<sup>st</sup> respondent dated 20.11.2014 in case No.ATA.No.349(1) of 2010 is based on evidence and documents available.

(ii) For implementation of social welfare enactment, the 2<sup>nd</sup> respondent company herein cannot be deprived of its legible rights, legally entitled to the 2<sup>nd</sup> respondent herein.

(iii) There is a categorical finding in the order impugned in the present writ petition dated 20.11.2014 in case No.ATA No.349 (1) of 2010 that the petitioner herein had received the required documents such as wage register, attendance register and salary slips and other relevant

documents, all put together 17 documents by the petitioner's officials, therefore having received the said documents the petitioner herein cannot allege that the 2<sup>nd</sup> respondent failed to submit the documents.

(iv) The petitioner failed to produce any evidence to take the 2<sup>nd</sup> respondent company into the fold of PF Act with effect from 1992-1993.

(v) Without there being any evidence on record the petitioner wrongly came to the conclusion that the 2<sup>nd</sup> respondent engaged 30 employees.

(vi) No efforts are made by the petitioner herein to explain in respect of the documents filed by the 2<sup>nd</sup> respondent and with regard to the delay in initiating enquiry under Section 7A and the order dated 30.04.2010 passed by the petitioner herein confirming the order dated 16.12.2008 passed under Section 7A of the Act are not sustainable in law as rightly held by the 1<sup>st</sup> respondent herein.

**Basing on the aforesaid submissions the learned Senior Counsel appearing on behalf of the 2<sup>nd</sup> respondent**

**contended that the writ petition should be dismissed in limine.**

**DISCUSSION AND CONCLUSION:**

7. A bare perusal of the order impugned dated 20.11.2014 passed in No. ATA No.349(1) of 2010 by the 1<sup>st</sup> respondent clearly indicates a categorical finding against the Regional Provident Fund Commissioner – I, Regional Office, Hyderabad herein that RPFC Hyderabad, while passing the order under Section 7B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'EPFMP' Act) determined EPF dues in respect of the 30 employees for the period from 1992-93 to 2005-06 and directed the 2<sup>nd</sup> respondent herein to pay the said amount of Rs.24,77,779/- as balance dues payable by the 2<sup>nd</sup> respondent herein for the period from 08.09.1992 to 2005-2006 and further directed the 2<sup>nd</sup> respondent to pay the said amount within 10 days, failing which the amounts shall be recovered as per the provisions of Section 8 of the 'EPFMP' Act, 1952, and the RPFC Hyderabad had not exercised the jurisdiction properly which is vested on it and failed to consider the documents, records and registers which were in the

custody of the Regional Provident Fund Commissioner, Hyderabad.

8. It is further very clearly observed in the order impugned dated 20.11.2014 passed in No.ATA No.349(1) of 2010 by the 1<sup>st</sup> respondent herein that the findings of the Regional Provident Fund Commissioner, Hyderabad in coming to the conclusion that the 2<sup>nd</sup> respondent company is an establishment covered under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, with retrospective affect, with effect from 1992-93 vide the orders dated 30.04.2010, is without any reason and without there being any evidence on record.

9. In fact there is a very clear observation in the order impugned dated 20.11.2014, in ATA No.349(1) of 2010 passed by the 1<sup>st</sup> respondent that the finding recorded by the Regional Provident Commissioner, Hyderabad, that the 2<sup>nd</sup> respondent herein had not produced documents such as vouchers and wages and salary for the relevant period is incorrect. Since altogether 17 documents were received from the 2<sup>nd</sup> respondent herein but curiously however the Regional Provident Fund Commissioner, Hyderabad did not record any finding in respect to the

said documents and instead alleged that the 2<sup>nd</sup> respondent company had not produced documents such as voucher for wages and the salary for the relevant period and the same is incorrect as borne on record as observed by the 1<sup>st</sup> respondent Tribunal on perusal of the relevant records.

10. This Court opines that it is settled law that liability cannot be saddled upon an establishment in the name of the compliance without identification of the employees, since in the present case without there being any evidence on record the RPFC Hyderabad wrongly came into a conclusion that the 2<sup>nd</sup> respondent company engaged 30 employees. In the writ petition filed by the 2<sup>nd</sup> respondent company, the High Court in its order dated 26.03.2009 passed in W.P.No.6456 of 2009 very clearly observed that the RPFC Hyderabad should pass an order basing upon the documentary evidence which were available on the said date and admittedly as observed in the order impugned dated 20.11.2014 passed by the 1<sup>st</sup> respondent herein, the RPFC Hyderabad had received the documents from the 2<sup>nd</sup> respondent company pertaining to the alleged period on two different occasions. But

however, there is no finding recorded by the RPFC Hyderabad as per the said orders of the High Court at Hyderabad dated 26.03.2009 passed in W.P.No.6456 of 2009.

11. Taking into consideration the aforesaid facts and circumstances of the case, and duly considering the clear observations made at paras 20 to 22 of the impugned order dated 20.11.2014 passed in ATA No.349(1) of 2010 by the 1<sup>st</sup> respondent herein (referred to and extracted above), in favour of the 2<sup>nd</sup> respondent herein, this Court is of the firm opinion that the order impugned dated 20.11.2014 passed by the 1<sup>st</sup> respondent in ATA No.349(1) of 2010, warrants no interference by this Court under Article 226 of the Constitution of India and accordingly, the same is dismissed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

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**SUREPALLI NANDA,J**

Date: 26.02.2024

**Note:** L.R.Copy to be marked  
(B/o) *Yvkr*