

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6550 of 2015

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1. St. Mathew High School, D-160, P.C. Colony, Kankarbagh, Patna 20, through Proprietor Janardan Upadhaya, Son of Late Laxmi Pati Upadhaya
2. Subodh Upadhaya son of Janardan Upadhaya, Both Resident of Mohalla Kankarbagh D-160, P.C. Colony, P.S.- Kankarbagh, District and Town Patna
..... Petitioners

Versus

1. The Union of India through Assistant Provident Fund Commissioner (Compliance) Bihar, Patna
2. The Enforcement Officer, Ministry of Labour (Government of India) Employees Provident Fund Organisation, Regional Office, Patna
3. The Recovery Officer, Employees Provident Fund Organisation, null Ministry of Labour, Government of India, Regional Bhavisyanidhi Bhawan, R-Block, Road No. 6, Patna
4. The State of Bihar through Director General of Police, Patna
5. The S.H.O. Kankarbagh Police Station, Patna
..... Respondents

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Appearance :

For the Petitioner/s : Mr. Nachiketa Jha, Adv.
For the Respondent/s : Mr. Pankaj Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 31-01-2018

Heard Mr. Nachiketa Jha, learned counsel appearing for the petitioners and Mr. Pankaj Kumar, learned counsel appearing for the Provident Fund Department.

Mr. Jha, learned counsel for the petitioners, informs that the father of petitioner no.1, who was the proprietor, has since deceased and therefore his son petitioner no.2 is pursuing the matter.

The petitioners are aggrieved by the order bearing No. BR/EB/6413/6621 dated 31.8.2012 passed by the Assistant Provident Fund Commissioner, Bihar, Patna, impugned at Annexure 1 to the



writ petition, whereby the petitioners establishment has been assessed for an outstanding of Rs.32,95,535/- towards provident fund dues to be deposited with the respondents on account of liability arising under the provisions of Employees Provident Fund and Miscellaneous Provision Act, 1952 (hereinafter referred to as 'the Act') and the scheme framed thereunder for the period March, 2004 to November, 2011.

The order has been questioned on grounds that the notice was not duly served on the petitioners establishment although a statement to such effect finds mentioned in the impugned order at running page-15. The second issue raised is that several deposits made by the establishment has not been accounted for. The third issue raised by Mr. Jha, learned counsel for the petitioners, is that the school itself was closed in December, 2009 and the intimation whereof was given to the Regional Provident Fund Commissioner.

It is taking note of the issues raised that this Court while recording the same in the order dated 13.12.2017 required a response from the department and following which an affidavit is filed and Mr. Pankaj Kumar, learned counsel for the Department, invites the attention of this Court to the statement made at paragraph-6 to contest and oppose the contentions advanced on behalf of the petitioners. He submits that despite due opportunity being granted to the petitioners



during the course of the proceedings held under section 7A of 'the Act' in between the period 24.5.2005 to 29.8.2012, neither the petitioners responded to the notice nor participated in the proceedings nor presented any document for consideration. He thus submits that it is on the basis of records available that the order impugned has been passed which suffers no infirmity.

Mr. Jha has referred to the supplementary affidavit filed in the proceedings to support his contention regarding deposits made as well as intimation given to the Regional Provident Fund Commissioner about closure of the school and contests the supplementary counter affidavit to submit that the issues so raised in the supplementary affidavit by the petitioner has not been contested nor denied nor any statement as regarding valid service of notice to the petitioner has been made in the affidavit.

I have heard learned counsel for the parties and have perused the records. In my opinion, the statement of the respondents in paragraph-6 in the supplementary counter affidavit supports the claim of the petitioners. It is mentioned that if the petitioners would have made available the documents relating to deposits before the authority, the same would have been considered as they are not readily traceable in the office of the deponent and relates to the year 2009. It is mentioned that computerization has taken place from April,



2012. It is also mentioned that if the petitioners would make available the returns in Form 12A(R) regarding the amount deposited, the same would be verified. Noticeably the issue regarding absence of service of notice has also not been contested in the affidavit nor any material has been placed on record to support that the notice was validly served on the petitioners. In other words the order has been passed without due opportunity of hearing to the petitioners and without verification of the records. In view of the documents of deposit on record of the supplementary affidavit as well as the intimation given to the Regional Provident Fund Commissioner regarding the closure of the school as back as in the year 2009, that the proceedings has continued even thereafter until 2012, the petitioners definitely have made out a case for indulgence and for remand because these are relevant aspects which has escaped notice of the assessing authority.

For the reasons so discussed, the order bearing No. BR/EB/6413/6621 dated 31.8.2012 passed by the Assistant Provident Fund Commissioner, Bihar, Patna, impugned at Annexure 1 to the writ petition, is quashed and set aside and the matter is remitted back to him for its reconsideration and disposal afresh in accordance with law but after due opportunity of hearing to the petitioners, who shall appear before the Assistant Provident Fund Commissioner together with the records in support of the contentions advanced and noted



hereinabove on or before 26th February, 2018 at 11.00 A.M.

It is made clear that in case the petitioner fails to register his appearance before the Assistant Provident Fund Commissioner or the Regional Provident Fund Commissioner on or before 26th February, 2018 at 11.00 A.M., the respondents would be at liberty to proceed in the matter in accordance with law for realization of the amount in question as this order would stand recalled.

The writ petition is allowed subject to the stipulations above.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.02.2018
Transmission Date	NA

