

Sumedico Corporation and Another

Vs

Regional Provident Fund Commr

Civil Appeals Nos. 5540 and 5541 of 1983 with Nos. 2611-12 of 1989

(S. B. Majmudar, V. N. Khare JJ)

19.02.1998

ORDER

1. These two appeals are moved by a common appellant that has felt aggrieved by order dated 8-12-1982 under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 passed by the authorities functioning under the Act against the present appellant. Civil Appeal No. 5540 of 1987 arises out of a writ petition which the appellant moved before the High Court of Gujarat challenging the aforesaid Section 7-A order on diverse grounds including the ground that Section 7-A was ultra vires the provisions of the Constitution of India. The High Court repelled the challenge to the vires of the provision by the impugned order and also made observations on the merits of the Section 7-A order. The other civil appeal is moved directly by the appellant against the Section 7-A order before this Court. As the controversy ultimately centres round the Section 7-A order itself which is the order of the first authority, these appeals were tagged together for disposal.

2. Pending these appeals, the legislature itself has amended the provisions of the Act by inserting Section 7-D providing for remedy of an appeal before an Appellate Tribunal. Not only that, but by notifications dated 30-6-1997 the Tribunal is already constituted and it is functioning at Delhi. Copies of the relevant notifications are taken on record. In view of this development, therefore, the question of challenge to the vires of Section 7-A on the ground that there was no appeal provided under the Act does not survive and it has become academic.

3. Now remains the question about the merits of the order under Section 7-A of the Act. So far as this question is concerned, it is true that the appellant in the first instance went to the High Court and the High Court made certain observations on the merits of the order. But, in our view, interest of justice will be served if we relegate the appellant to the statutory remedy available now to it to approach the Tribunal constituted under Section 7-D of the Act. We, therefore, relegate the appellant to the remedy of this statutory appeal which shall be filed by the appellant within a period of two months from today. If such appeal is filed within that time, the Tribunal will decide the same on merits after bearing the parties concerned.

4. This direction will result in making CA No. 5541 of 1983 infructuous as that appeal is directed against the very same Section 7-A order which is being permitted to be challenged by the appellant before the Tribunal.

5. So far as the judgment and order of the High Court under appeal in CA No. 5540 of 1983 are concerned, once we relegate the appellant to the remedy of statutory appeal under Section 7-D pursuant to the present order, the observations made by the High Court on the merits of the impugned Section 7-A order would not survive any further and will be treated to be of no legal

consequence. Meaning thereby, the entire controversy centering round Section 7-A order will have to be decided on its own merits by the Tribunal unfettered by any earlier observations made by the High Court in this connection and which observations are treated to be of no consequence by our present order.

6. We make it clear that we are expressing no opinion on the merits of the Section 7-A order. Similarly, we express no opinion on the observations of the High Court on the merits of Section 7-A order as in our view those observations do not survive in view of the statutory remedy made available to the appellant.

7. The appeals are accordingly disposed of. No costs.

In CAs Nos. 2611-12 of 1989

8. These two appeals by special leave are moved by a common appellant, who felt aggrieved by two orders of the High Court of Delhi. One order was passed by the Division Bench of the High Court in a writ petition under Articles 226 and 227 of the Constitution of India on 10-5-1988 and another order was passed by the Bench in review petition rejecting the same on 19-8-1988.

9. The authorities functioning under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 passed an order under Section 7-A on 24-11-1984. By the said order the appellant's concern was held to be covered by the provisions of the Act. The said order was challenged before the High Court. The High Court dismissed the writ petition by one word "dismissed". The review petition was dismissed subsequently by observing that "... in spite of repeated opportunities, the petitioner has failed to produce the original record before the Provident Fund Commissioner. No ground for interference. Dismissed."

10. Now it must be observed that by subsequent amendment to the Act, Section 7-D was brought on the statute-book by the legislature and a statutory remedy of appeal before the Appellate Tribunal was made available for challenging the order under Section 7-A of the Act. Such a Tribunal is also established vide a notification dated 30-6-1997. We have already made necessary observations in this connection in our judgment and order passed today in Civil Appeals Nos. 5540-5541 of 1983. Consequently, in the light of our observations in the aforesaid decision, it must be held that the present appellant also is required to be relegated to the statutory remedy of appeal before the Appellate Tribunal, Delhi functioning under Section 7-D of the Act. For that purpose, we grant two months' time to the appellant to file appropriate statutory appeal against the impugned Section 7-A order. Once this appeal is filed, it will be open to the appellant to put forward all the legally permissible contentions against the Section 7-A order including the contention, if any, pertaining to the jurisdiction of the authority passing such orders. All these contentions will be examined by the Tribunal on their own merits after hearing the parties concerned.

11. We express no opinion on the merits of the controversy centering round the impugned Section 7-A order. It is obvious that the High Court has not observed anything on merits of the order against the appellant. Therefore, the Tribunal will decide the statutory appeal on its own merits in the light of the evidence that may be led by the contesting parties before it and in the light of all legally permissible contentions canvassed for its consideration.

12. Subject to these clarifications, these appeals are disposed of. No costs.

13. Learned counsel for the appellant informed us that as there was no stay of the Section 7-A order

pending these appeals, the appellant has made requisite deposits before the authorities in compliance of the Section 7-A order. It is obvious that the said amount, if deposited, will abide by the final result in the appellate proceedings which may be filed by the appellant before the Tribunal.