



कर्मचारी भविष्य निधि संगठन

EMPLOYEES PROVIDENT FUND ORGANISATION

श्रम एवं रोजगार मंत्रालय, भारत सरकार

MINISTRY OF LABOUR AND EMPLOYMENT, GOVERNMENT OF INDIA

मुख्य कार्यालय / Head Office

भविष्य निधि भवन, 14, भीकाजी कामा प्लेस नई दिल्ली -110066

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संख्या: समन्वय/5(16)2009/विविध/

8927

दिनांक: 16.8.2011

सेवा में,

सभी अपर केन्द्रीय भविष्य निधि आयुक्त (जोन)
सभी क्षेत्रीय भविष्य निधि आयुक्त/कार्यालय प्रभारी,
क्षेत्रीय /उप क्षेत्रीय कार्यालयों के प्रभारी ।

विषय: जे.के कॉलेज ऑफ नर्सिंग एंड पैरा- मैडिकल्स के विषय के संबंध में लिखित याचिका (रिट पीटीशन सी) 8195/2010 एंड सी एम सं. 21123/2010 में माननीय उच्च न्यायालय, नई दिल्ली द्वारा दिए गए ऐतिहासिक निर्णय का प्रेषण ।

महोदय,

कृपया, जे.के. कॉलेज ऑफ नर्सिंग एंड पैरा- मैडिकल्स के विषय के संबंध में दिल्ली के उच्च न्यायालय, नई दिल्ली द्वारा दिए गए ऐतिहासिक निर्णय दिनांक 24.05.2011 की संलग्न प्रति प्राप्त करें ।

उपर्युक्त विषय में, माननीय उच्च न्यायालय ने व्यवस्था दी है कि कर्मचारियों की संख्या केवल स्थापना की जानकारी में ही हो सकती है और यह स्थापना का कर्तव्य है कि वह अपने कर्मचारियों की संख्या के संबंध में कर्मचारी भविष्य निधि प्राधिकारियों को संतुष्ट करें ।

उपरोक्त व्यवस्था को समान मामलों में, गुण-दोषों के आधार पर निपटान करते समय व्यवहार में लाया जाए ।

संलग्न : उपर्युक्त

भवदीय,

अनिता

(अनिता एस.दीक्षित)

क्षेत्रीय भविष्य निधि आयुक्त -I(समन्वय)

प्रतिलिपि:

1. सभी अ.के.आ./वि.सलाह.एवं मुख्य लेखाधिकारी/मुख्य सतर्कता अधि./निदेशक,नाटर्स/क्षे.भ.नि.आ.I एवं क्षे.भ.नि.आ.II, मुख्यालय
2. क्षे.भ.नि.आ.(एन.डी.सी.) को कर्मचारी भविष्य निधि संगठन की वेबसाइट पर अपलोड करने के अनुरोध सहित ।

(वी.वी.बी. सिंह)

क्षेत्रीय भविष्य निधि आयुक्त -II (समन्वय)

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27-7-11

RC II / Corred.
693

Amid
Ry
28/7/11

291
28/7/11

183

Decided

Final Draft

9/7/11

No. 15243 /DHC/WRITS/D-6/2011

Dated 4-6-11

From

The Registrar General
High Court of Delhi
New Delhi

To

- 1. Union of India, Represented by the Secretary, Department of Labour, Shrama Shakti Bhavan, New Delhi.
- 2. The Central Provident Fund Commissioner, Office of the Employees Provident Fund Organisation, Bhikaji Cama Place, New Delhi.

CIVIL MISC. PETITION NO. 21123/2010
AND
WRIT PETITION (CIVIL) NO. 8195/2010

J.K. College of Nursing & Pharmaceuticals
Vs.
Union of India & ors.

...Petitioner/s

...Respondent/s

Sir,

I am directed to forward herewith for information and immediate compliance/necessary action a copy of order dated 24.5.2011 passed by Hon'ble Mr. Justice Rajiv Sahai Endlaw of this Court in the above noted case alongwith a copy of Memo of Parties.

Please acknowledge receipt.

Yours faithfully

Administrative Officer Judicial (Wrts)
for Registrar General

AB/2.6.11

IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 8/95 OF 2010

(Against Order dt. 10.9.10 passed by EPF Appellate Tribunal, New Delhi in ATA-216/13/2001)

IN THE MATTER OF

J.K. College of Nursing & Paramedicals

... Petitioner

Versus

Union of India & Ors.

... Respondents

MEMO OF PARTIES

Between

J.K. College of Nursing & Paramedicals
Through Smt. K.S. Geetha,
Correspondent,
S.F. No.90 Kamaraj Road,
Next to ESI Hospital,
Uppillipalayam,
Coimbatore-641 015.
Tamilnadu.

... Petitioner

And

1. Union of India, represented by the Secretary in the Department of Labour, Shrama Shakti Bhavan, New Delhi.
2. The Central Provident Fund Commissioner, Office of the Employees Provident Fund Organisation, Bhikaji Cama Place, New Delhi.
3. Shri Srikanata Nayak
Presiding Officer,
Employees Provident Fund Appellate Tribunal,
5th-6th Floor, Skylark Building,
60, Nehru Place,
New Delhi-110 019.

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4. Regional Provident Fund Commissioner,
Office of the Employees Provident Fund
Organisation, Bhavishyanidhi Bhavan,
Dr. Balasundaram Road,
Coimbatore-641 018, Tamilnadu.
5. The Enforcement Officer,
Office of the Employees Provident Fund
Organisation, Bhavishyanidhi Bhavan,
Dr. Balasundaram Road,
Coimbatore-641 018, Tamilnadu.
6. The Recovery Officer,
Office of the Employees Provident Fund
Organisation, Bhavishyanidhi Bhavan,
Dr. Balasundaram Road,
Coimbatore-641 018, Tamilnadu.
7. The Manager,
Indian Overseas Bank,
Singanallur Branch,
339, Kamarajar Road,
Coimbatore-641 015.
Tamil Nadu
8. The Branch Manager
State Bank of Bikaner & Jaipur
Coimbatore
Tamil Nadu

... Respondents

Through

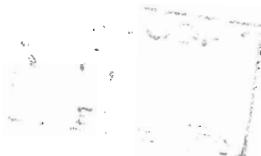
(MATHEWS J. NEDUMPARA)/(RABIN MAJUMDER)

Advocates for the Petitioner
92, Maitri Apartments
Mayur Vihar Phase – I
Delhi - 110091

New Delhi

Dated: 22.11.2010

Mob. 9818248048; 9899259811



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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 24th May, 2011

W.P.(C) 8195/2010 & CM No.21123/2010 (for stay)

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**J K COLLEGE OF NURSING &
PARAMEDICALS**

..... Petitioner

Through: Mr. Rabin Majumdar, Advocate.

Versus

UOI & ORS

..... Respondents

Through: Mr. Ruchir Mishra, Advocate for R-1.
Mr. Shivanath Mahanta, Advocate for R-2&4 to 6.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

} ya

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 10th September, 2010 of the Employees' Provident Fund Appellate Tribunal, New Delhi dismissing the appeal of the petitioner against the order under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952,

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finding the petitioner to be employing more than 20 employees and thus, though covered by the provisions of the Act but in non-compliance thereof.

2. It is the case of the petitioner that it has never employed even 20 persons and the EPF Authority had wrongly found the petitioner to have engaged 37 persons and having not extended the benefit of the Act to the said employees.

3. The Appellate Tribunal, relying upon *Saraswati Construction Company v. Central Board of Trustees* 171 (2010) DLT 3, held that if any establishment or employer claims to be not covered under the said Act, then it is for the employer to place sufficient cogent and convincing material before the designated authority in an enquiry under Section 7A of the Act, so as to satisfy the Authority with regard to non-applicability of the Act and further held that on failure to place any such material, the onus cannot be shifted on the EPF authorities to prove the applicability of the Act. It was yet further held that the EPF authorities under no circumstances can be in possession of necessary records evidencing the extent of strength of employees in any particular establishment.

4. The Tribunal further held that the petitioner in the present case had

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failed to place any such material and had not produced any documents to show its staff strength and on the contrary the order of the EPF Authority in appeal before the Tribunal revealed that the staff strength was determined on the basis of attendance register and salary register. The Tribunal held that there was no material to disbelieve the documents and no inconsistency was noticed in the order of the EPF Authority.

5. The contention of the counsel for the petitioner is that the judgment of this Court in *Saraswati Construction Company* (supra) is *per incuriam*, having not noticed the provisions of Section 101 of the Indian Evidence Act, 1872. It is contended that burden necessarily has to be on the person asserting the fact and in the present case it was the EPF Authority that was asserting that the petitioner was employing more than 20 persons and the Tribunal has wrongly held that the burden was on the petitioner.

6. It is further contended that there is no finding whatsoever of 37 employees in any of the orders of the EPF Authority also. It is yet further contended that there is no such plea in the counter affidavit filed before the Tribunal also.

7. Per contra, the counsels for the respondents appearing on advance

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notice have invited attention to Section 106 of the Evidence Act providing that where any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. With respect to the argument of there being no finding of 37 employees, it is contended that as per the attendance register of the petitioner there were 37 employees. On enquiry, as to where it has been so found, the counsel for the respondent has invited attention to the counter affidavit filed in the present writ petition. However it is not deemed expedient to refer to the said counter affidavit since, neither was the same allowed to be filed and further since the counsel for the petitioner claims that he has not received copy thereof. The counsel for the respondent has also contended that the petitioner in its letter dated 21st October, 2010 to the respondent no.3 had admitted the liability and had enclosed a Demand Draft for ₹1,50,000/- towards part payment and had sought installments for payment of the balance.

8. The counsel for the petitioner rejoins by contending that the said amount was paid per force and cannot prevent the petitioner from agitating its rights.

9. I am unable to agree with the contention of the counsel for the

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petitioner that the judgment in *Saraswati Construction Company* is *per incuriam* and I have no reason whatsoever to disagree from the view taken therein. The strength of employees can be within the exclusive knowledge of the establishment only and it is the duty of the establishment to satisfy the EPF authorities of the strength of its employees. The emphasis placed on Section 101 of the Evidence Act is misplaced. The said rule is a rule of evidence in the Court and in my opinion would not apply to the proceedings before the EPF authorities. Though the counsel for the petitioner invites attention to Section 7(J) of the Act but the same is not found to be of any assistance in this regard; rather the same enables the Tribunal, as distinct from the EPF Authority, to regulate its own procedures and vests only certain powers of the Civil Court in the Tribunal to enable the Tribunal to prosecute the witnesses falsely deposing before it. In any case, the reliance by the counsel for the respondents on Section 106 of the Evidence Act is also apposite. The Division Bench of the Calcutta High Court also in *State of West Bengal Vs. Board of Revenue, West Bengal* 1975 LIC 1162 relied upon Section 106 of the Evidence Act to hold the burden in such cases to be on the establishment. I also find that LPA No.400/2010 preferred against the

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judgment in *Sarswati Construction Co.* was dismissed on 2nd June, 2010.

10. I also find the view in *Saraswati Construction Co.* (supra) to be in consonance with the judgments of the other High Courts. Reference may be made to:-

- (a) *Chudasma Engineering Works Vs. RPF, Bangalore* 1985 (67) FJR 363 (Karnataka).
- (b) *Employees' State Insurance Corporation Vs. Rasu Tools Ltd.* (2000) 1 LLJ 372 (Andhra Pradesh)
- (c) *Regional Director, ESI Corporation, Bangalore Vs. Malekoppam Metal Forms Private Ltd.* 2001 (6) Kar. LJ 139.
- (d) *Regional Director, ESI Corporation Vs. G. Sivaprasad* (2010) 1 LLJ 279 (Kerala).
- (e) *Gopi Chand Vs. Employees' State Insurance Corporation* 172 (2010) DLT 565.
- (f) *Syndicate Printers Vs. Regional Director, ESI Corporation* MANU/TN/0515/2011.

11. Reference may also be made to the Division Bench judgment of the Patna High Court in *Bankim Chandra Chakravarty Vs. Regional*

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Provident Fund Commissioner AIR 1958 Patna 314 laying down that once the authorities under the Act have held the number of employees in the establishment to be more than required to bring the establishment within the purview of the Act, it is up to the person challenging the said finding to establish that infact the number is less. A Single Judge of this Court in *Laksmi Restaurant Vs. The Regional Provident Funds Commissioner, Delhi* 10 (1974) DLT 369 also held that if anybody feels aggrieved by some order and files a petition in the High Court, he must bring sufficient material before the Court to displace the finding and the same has nothing to do with the question of onus of proof before the Provident Funds Commissioner. It was further held that in matters like this, the question of onus of proof is immaterial; the Provident Funds Commissioner is an authority created by the statute who has to administer the statutory provisions according to law and for this purpose he is entitled to collect material by resort to powers under various provisions of law including by examination of the books of accounts and others records of establishments.

12. In the present case, the EPF Authority in the order dated 19th February, 1999 has recorded as to how the petitioner employer dodged

the proceedings and failed to appear and produce documents repeatedly. Similarly in the order dated 9th November, 2000 of the EPF Authority also, it is recorded that records maintained by the petitioner establishment are in complete variance with the statement originally made by the same establishment; that though the petitioner claimed most of the employees to be excluded from the purview of the Act but could not submit any proof thereof; that the names and salary reflected in the salary register were totally at variance with the survey account taken from the ledger for the relevant period and the salary records maintained for teaching and non-teaching staff were found to conceal the names of all the employees. The EPF Authority in the said order further recorded that the petitioner did not even reveal the particulars and address of the various persons whose names figured on its records. The EPF Authority accordingly held the petitioner to be guilty of concealment of facts regarding employees and salary, of fabrication of records and of evasion of statutory obligations.

13. In the present case, the petitioner has not placed any material before this Court to displace the findings returned by the authorities below and which onus as laid down in *Laksmi Restaurant* (supra) was

definitely on the petitioner.

14. Moreover, the aforesaid are findings of facts relating to the proceedings before the Authorities and no ground is shown for interference in exercise of the powers of judicial review. In any case, the counsel for the petitioner had confined the argument as aforesaid only to, the reasoning given by the Tribunal as to burden of proof, being erroneous in law.

15. The counsel for the respondents has relied on *Syed Yakoob v. K.S. Radhakrishnan* 1963 INDLAW SC 153 & *Hari Vishnu Kamath v. Ahmad Ishaque* 1954 INDLAW SC 212 as to the scope of writ jurisdiction.

16. As far as the arguments of the counsel for the petitioner of there being no mention of number of employees as 37 in the order under Section 7A is concerned, a perusal of the order of the Tribunal shows that it was the argument of the petitioner itself before the Tribunal that the order under Section 7A covering it under the Act on the allegation that it engages 37 persons is illegal. A reading of the said order does not show that there was any dispute in this regard and that was the precise challenge before the Tribunal. A perusal of the writ petition also does not

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show that any ground in this regard has been taken. The counsel for the petitioner admits that it has not been expressly so stated in the writ petition that there is no finding of 37 employees. All this leads one to believe that the challenge now being made orally on this ground is only to buy time.

17. There is no merit in the petition the same is dismissed. No order as to costs.

May 24, 2011
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SD/
RAJIV SAHAI ENDLAW, J

