

**ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI**

Constitutional Petition No.D-2579 of 2013

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Order with signature of Judge(s)

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Present:  
Muhammad Ali Mazhar, J  
Abdul Maalik Gaddi, J.

1. For order on office objection
2. For hearing of Misc. No.19103/2013
3. For hearing of main case

20.10.2016

Mr. Ghulam Mustafa for Petitioner  
Sheikh Liaquat Hussain, Standing Counsel  
None present for Respondent No.4

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**Muhammad Ali Mazhar, J.** The Petitioner is engaged in the business of textile products in four units of different capacity and nature. The Petitioner's establishment is also registered under the Employees Old-Age Benefits Act, 1976 (**EOBI Act, 1976**). On 06.6.2011, the Respondent No.3 issued Show Cause Notice on the ground that the contribution for the period from July, 2007 to June, 2010 has not been paid in accordance with the actual strength of employees. On 26.6.2012, Notice of Demand under Section 81 of the Land Revenue Act, 1967 in the sum of Rs.76,72,320/- was issued to the Petitioner for payment by Assistant Collector (Grade-I), Employees Old-Age Benefits Institution, Karachi. In order to assail this demand, the Petitioner filed Complaint under Section 33 of the EOBI Act, 1976 on 17.2.2012. The Adjudicating Authority-I of EOBI Institution Sindh & Balochistan at Karachi upheld the demand and dismissed the complaint mainly on the ground that despite providing various opportunities to produce the record for verification, no such documents were produced before the Adjudicating Authority. This order was challenged by the Petitioner before the Appellate Authority by filing appeal under Section 35 of the EOBI Act, 1976, but the appeal was also dismissed on the same basis that the record of employees engaged by the Appellant / Petitioner was not produced.

2. The learned counsel for the Petitioner argued that the Petitioner never refused to produce the record, but without providing ample opportunity, the complaint was dismissed and on the same findings the appeal was also rejected. Huge demand has been raised without verifying the actual strength of the employees even no proper breakup or working has been shown for raising the huge demand on account of unpaid contribution. When we confronted the impugned order to the learned counsel for the Petitioner, in which it is repeatedly stated that the record was not produced, which fact is also reiterated in the appellate order. The learned counsel denied the findings and argued that request was made to produce the record, but it was not allowed and complaint was rejected without deciding the actual strength of employees.

3. Counsel for the Petitioner further argued that if some reasonable time is allowed to them they will produce the entire record before the Adjudicating Authority. It is further contended that Petitioner is already paying contribution for more than 3000 employees and have already paid the contribution for the years 2007 to 2010 for which impugned demand was raised without verifying the payment from EOBI's own record and at present no arrears are due.

4. Notice to the Respondents was issued on 26.9.2013. On 11.12.2013, Mr. Shah Muhammad, Law Officer of EOBI was present and requested to file counter affidavit and to engage counsel for Respondents No.2 to 4. Thereafter, on 15.5.2015, Mr. Hakim Ali advocate appeared and requested for adjournment on behalf of Mr. Shahnawaz advocate for the Respondent. Again on 17.8.2016, Mr. Zulfiqar Ali Langha advocate for the Respondent appeared and requested to file comments. Despite various opportunities no comments have been filed by Respondents No.2 to 4 and today neither their counsel is present nor any official from their Department. In fact there is no rebuttal to the plea that Petitioner wanted to produce the record but opportunity was not provided to them.

5. Since in this case, the production of record and its verification is necessary to adjudicate the actual liability of contribution. The contribution is payable against the actual strength and not on hypothesis. To fix the liability proper calculation is required which is missing in this case, therefore, in order to provide fair opportunity to the Petitioner, the

impugned orders passed by the Appellate Authority and Adjudicating Authority both are set aside, the matter is remanded to the Adjudicating Authority to decide the complaint afresh. The Petitioner may produce relevant record before the Adjudicating Authority. The Adjudicating Authority-I shall decide the matter within a period of 45 days after providing ample opportunity of hearing to the Petitioner. In case, Petitioner fails to produce relevant record, the fresh Demand Notice shall be issued in accordance with the assessment of the Adjudicating Authority.

Petition is disposed of with listed application.

JUDGE

JUDGE

Zahid/\*