

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 1575 of 2015 (V)

PETITIONER(S):

**THE MANAGER,
MALJAU AITHAM ORPHANAGE UPPER PRIMARY SCHOOL,
(MALJAU AITHAM UPPER PRIMARY SCHOOL), MAOUPS, ELAYUR,
P.O.IRUVETTY, AREACODE, MALAPPURAM DISTRICT, PIN- 673 639.**

**BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN**

RESPONDENT(S) :

- 1. THE ASSISTANT PROVIDENT FUND COMMISSIONER,
OFFICE OF THE REGIONAL PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, BHAVISHAYA NIDHI BHAVAN,
P.B. NO. 1806, ERANHIPPALAM P.O., CALICUT -673 006.**
- 2. THE ENFORCEMENT OFFICER,
OFFICE OF THE ENFORCEMENT OFFICER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, BHAVISHYA NIDHI BHAVAN,
P.B. NO. 1806, ERANHIPPALAM P.O., CALICUT- 673 006.**
- 3. THE RECOVERY OFFICER,
OFFICE OF THE ENFORCEMENT OFFICER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, BHAVISHYA NIDHI BHAVAN,
P.B. NO. 1806, ERANHIPPALAM P.O., CALICUT- 673 006.**
- 4. THE EMPLOYEES PROVIDENT FUND
APPELLATE TRIBUNAL, 4TH FLOOR, CORE-2,
SCOPE MINAR, LAKSHMI NAGAR, DELHI - 110 092,
REPRESENTED BY ITS REGISTRAR.**

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, S.C

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1:** A TRUE COPY OF THE NOTICE BEARING NO. KR/17872/7A/SRO/KKD/ENF. 3(2)/2007/6106 (ENQUIRY NO. 398/2007) DATED 22/11/2007 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXHIBIT-P2:** A TRUE COPY OF THE ORDER NO. KR/17872/7A/SRO/KKD/ENF.3(2)/6649 DATED 18/12/2007 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT-P3:** A TRUE COPY OF THE NOTICE OF DEMAND TO DEFAULTER ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.
- EXHIBIT-P4:** A TRUE COPY OF THE APPEAL MEMORANDUM (PAGES 1 TO 9) FORWARDED BY THE PETITIONER TO THE OFFICE OF THE 4TH RESPONDENT.
- EXHIBIT-P4(A):** A TRUE COPY OF THE APPEAL MEMORANDUM NUMBERS AS ATA NO. 34(7)2011 (PAGES 1 TO 9) ON THE FILES OF THE FOURTH RESPONDENT.
- EXHIBIT-P5:** A TRUE COPY OF THE ANNEXURE-A14 AS PRODUCED BY THE PETITIONER ALONG WITH THE APPEAL MEMORANDUM ATA NO. 34 (7) 2011 AS PAGES 45 TO 56.
- EXHIBIT-P6:** A TRUE COPY OF THE INTERIM ORDER DATED 17/03/2011 IN ATA NO. 34(7) 2011 PASSED BY THE 4TH RESPONDENT.
- EXHIBIT-P7:** A TRUE COPY OF THE RECEIPT ISSUED BY THE STATE BANK OF TRAVANCORE, MANJERI BRANCH EVIDENCING THE DEPOSIT OF RS.3,04,872/- ON 12/07/2011 BY THE PETITIONER IN COMPLIANCE WITH DIRECTION IN EXHIBIT-P6 INTERIM ORDER.
- EXHIBIT-P8:** A TRUE COPY OF THE ORDER DATED 25/04/2014 IN ATA NO.34 (7) 2011 ISSUED BY THE 4TH RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

K. VINOD CHANDRAN, J.

W.P.(C) No. 1575 of 2015

Dated this the 20th day of January, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P8 order of the Employees' Provident Fund Appellate Tribunal. The proceedings initiated against the petitioner was one under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act (hereinafter referred to as 'the EPF&MP Act' for short).

2. Initially by way of notice, evidenced at Ext.P1 which concluded in Ext.P2 Order, the petitioner filed an appeal before the Employees' Provident Fund Appellate Tribunal by Ext.P4. The appeal was admitted and a conditional order was passed, wherein the petitioner was directed to pay 40% of the demand. The petitioner contends that he has paid the amount directed by the Tribunal.

3. Subsequently, by Ext.P8, the Tribunal had rejected the appeal on the ground that the appeal is filed against a notice and such an appeal would not be maintainable. The petitioner is aggrieved by the aforesaid Order.

4. I have also heard the learned Standing Counsel for the respondent Organisation.

5. On going through the appeal memorandum it is seen that the petitioner has challenged the Order dated 13.12.2007 bearing no. KR/17872/7A/SRO/KKD/Enf.3(02)/6649, which is Ext.P2, a final order passed under section 7A of the EPF&MP Act. However, when producing the order along with the appeal memorandum, as Annexure A14, the first page of Ext.P2 was erroneously substituted with the first page of Ext. P1. Only this inadvertent error has led to the Tribunal rejecting the appeal. This Court, on going through the entire records, is satisfied that the petitioner,

by an inadvertent omission, had produced the first page of the notice in substitution of the first page of the Order itself.

6. In such circumstance, Ext.P8 order would stand set aside. The appeal would stand restored to the files of the Appellate Tribunal. The petitioner shall produce the Order which is appealed against by way of a separate petition and seek for substitution of Annexure A14. The Tribunal shall allow it and consider the appeal on merits. Since the petitioner has paid the amount as directed by the Tribunal in the appeal, as an interim measure, the recovery proceedings will be kept in abeyance and subject to the final orders to be passed in the appeal.

The Writ Petition is allowed.

Sd/-
K.VINOD CHANDRAN,
JUDGE

jjj