

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3/11/2015

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.8778 of 2015

a n d

M.P.No.1 of 2015

M/s.Archana Institute of Technology
rep. By its Chairman/Correspondent
D.Jayapal
NH 7 Salem Main Road
Thimmapuram
Krishnagiri District. ... Petitioner

Vs

The Assistant Provident Fund Commissioner
Sub-Regional Office
SJ Plaza
Swarnapuri
Salem 636 004. ... Respondent

Prayer :-Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent by the proceedings No.TN/SRO/SLM/COMP-II/90896/K-1/2015 dated 18/3/2015 and quash the same.

For petitioner ... Mr.M.Arunkumar

For respondent ... M/s.R.Meenakshi

O R D E R

With the consent of the learned counsel for the parties, the writ petition is taken up for final disposal.

2. Heard Mr.M.Arunkumar for the petitioner and M/s.R.Meenakshi for the respondent.

3. This writ petition is filed praying to quash the proceedings of the respondent made in TN/SRO/SLM/COMP-II/90896/K-1/2015 dated 18/3/2015.

4. The petitioner is an Educational Institution has challenged the proceedings of the respondent Organisation, demanding contribution for its employees. The petitioner would state that the impugned order is an ex parte order and therefore, one more opportunity may be granted to the petitioner to place all materials before the authority to demonstrate as to how they would not be covered under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

5. In the affidavit filed in support of the writ petition, the petitioner would state that one of their Directors, viz., Mr.H.Hussainy, who was in charge of the administration, appeared before the respondent with the documents. However, due to his sudden demise, the matter could not be effectively followed up.

6. The learned Standing Counsel appearing for the respondent submits that the respondent authority granted nineteen adjournments, so as to afford an opportunity to the petitioner and in spite of the same, the petitioner did not appear and produce the documents, which resulted in the impugned order. It is further submitted that if the petitioner is aggrieved, he has to approach the appellate authority under the relevant provisions of the Act.

7. After hearing the learned counsel for the parties and on a perusal of the materials placed on record, it is evident that the impugned order came to be passed on account of the fact that the petitioner or their representative did not appear for the enquiry. The respondent authority cannot faulted for having proceeded ex parte. But however, the impugned order only proceeds on the basis because the petitioner has not appeared, the order stands confirmed. Even in cases of ex parte order, the authorities are required to record brief reasons as to how the proposal made by the Department earlier has to be confirmed.

8. In the light of the above, this Court is inclined to grant one more opportunity to the petitioner to submit the relevant documents and appear before the respondent. But however, such an opportunity shall be subject to stringent conditions.

9. Accordingly, the writ petition is disposed of, by directing the petitioner to deposit a sum of Rs.10 lakhs (Rupees Ten lakhs only) before the respondent within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the respondent shall afford an opportunity of personal hearing to the petitioner and then pass fresh orders on merits and in accordance with law. If the petitioner fails to comply with the conditional order passed by this Court within the time stipulated, the writ petition will stand automatically dismissed, without any further reference to this Court and the respondent Organisation would be entitled to proceed with the recovery process. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

True Copy

Sub Assistant Registrar

To
The Assistant Provident Fund Commissioner
Sub-Regional Office
SJ Plaza
Swarnapuri
Salem 636 004.

+2cc to M.R.Kannan, Advocate Sr.61574
+1cc to Mr.R.Meenakshi, Advocate Sr.60497

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