IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.9715 of 2015 &
M.P.Nos. 1, 2 & 3 of 2015

St. Michael Higher Secondary School
Represented by its Correspondent
Gingee - 604202, Villupuram. ... Petitioner

Vs

1. The Assistant Provident Fund Commissioner (Compliance)
Employees Provident Fund Organisation
Sub-Regional Office
P.B.No.588 Shree Complex
No.18 Madurai Road, Trichy 620 008.

2. The Enforcement Officer
Employees Provident Fund Organisation
Cuddalore & Villupuram Districts
22,Nethaji Road ARA Complex
Manjakuppam, Cuddalore-607001. ... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus, to call for the records in respect of the impugned demand notice dated 10.12.2014 in No. TN/SRO-TRY/PDC/C-21/76742/14B PROC/2014 and in No. TN/SRO-TRY/PDC/C-21/76742/7Q PROC/2014 on the file of the 1st respondent and the consequential show-cause notice for prosecution dated 11.03.2015 in No. TN/TNY/76742/ EO/DO/2015 on the file of the 2nd respondent and quash the same directing the respondents to adjust the amount of Rs.13 99 196/-already paid in excess by the petitioner school.

For Petitioner : FR.A.Xavier Arulraj

For Respondents : Mr.K.Gunasekaran,
Sr Panel Counsel for Central Govt

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mr.FR.A.Xavier Arulraj, learned Counsel appearing for the petitioner and Mr.K.Gunasekaran, learned Senior Panel Counsel for Central Government appearing for the respondents.

3.The petitioner is an unaided minority Tamil Medium School funcioning at Gingee. It is admitted that the School was established in 1996 and is in existence as on date. The dispute in this Writ Petition is on account of a demand issued by the first respondent dated 10.12.2014 and a consequential show cause notice for prosecution issued by the second respondent. According to the petitioner, they have paid far in excess than the amount demanded. Therefore, it is submitted that the question of demanding interest or levying penalty or charges does not arise.

4.The entire controversy arose on account of the default committed by the petitioner in not responding to the summons issued by the first respondent to appear before them and produce the records. This resulted in an exparte proceedings of the first respondent dated 02.06.2011. On a perusal of the proceedings, it is seen that inspite of 19 chances offered to the petitioner, the petitioner have failed to utilise the opportunity and represent their case. Therefore, based on records available with the first respondent, which was based on the Enforcement Officer's Asessment report dated 7.10.2009, the assessment was made and an order came to be pssed on 02.06.2011.

5.Subsequent proceedings initiated by the petitioner including the writ petition filed before this Court earlier may not be very germane to give a disposal to the present writ petition on account of certain subsequent events. The learned counsel for the petitioner on insturctions submitted that it is true that the petitioner Management failed to respond to the summons issued by the respondents, but this was mainly due to the fact that the School was a non-fee levying school, having been established and administered in a remote village and due to lack of proper advise, they have not responded to the summons. But, subsequently after the assessment was made, amounts have been remitted. The discrepency which is now sought to be pointed out is on the ground that the number of teachers are not as mentioned in the Enforcement Officer’s report, which has resulted in an order of assessment on 2.6.2011, and the petitioner pleads that an opportunity may be afforded to appear before the autority to consider their case based on records to be given to them to satisfy the authoritiy that whatever has been paid by them is far and excess of the amount demanded.

6.The learned Senior Panel Counsel for Central Government appearing for the respondents elaborately referred to the factual details as set out in the counter affidavit and submitted that the respondents were justified in passing the impugned orders and since the petitioner has failed to comply with the demand, the Act empowers the second respondent to initiate prosecution.

7.After hearing the learned counsel for the parties and perusing the materials placed on record, it is seen that the impugned order of assessment which was the exparte order of assessment came to be passed on account of non co-operation of the petitioner Management in the proceedings initiated by the respondent organisation. It appears that the petitioner Management has realised their mistake and they are ready and willing to place all records before the first respondent to his satisfaction, so as to be establish their case that whatever amount paid by them is far in excess than the amount actually payable.

8.In paragraph No.22 of the counter affidavit, the first respondent has stated that to prove the petitioner's statement, unless the records of the petitioner School from 1996 to March 2014 is produced for clarification, verification and rectification, the plea of the petitioner School that they have paid in excess cannot be acceeded to. But, in paragraph No.23 of the counter afffidavit, it is stated that the respondent has no power to revise or completely waive the damages and interest leviable under section 14B and 7Q of the Act, even after considering the mitigating factors which led to delay in payment of Provident Fund dues for the period in question belatedly.

9.Thus, the first respondent has not foreclosed the entire matter, but, willing to consider the records, if produced by the petitioner for clarification, verification and rectification. Faced with the situation, the petitioner is also ready and willing to appear before the first respondent and produce all records to the satisfaction of the first respondent.

10.With regard to the reduction/waiver of damages and interest, so far as the statutory interest is concerned, it is true that the first respondent is not empowered to waive the same, however, with regard to penal interest or damages, they can be considered, based on the amount due and payable and other mitigating circumstances. Assuming if it is established that the petitioner is not entitled to pay the amount as demanded, then it goes without saying the question of demanding penal interest or damges on such amount, would not arise.

11.In the light of the above, the Writ Petition is disposed of with the direction to the petitioner to appear before the first respondent along with all records along with a detailed representation giving all facts and figures. On such representation being made with records, the first respondent shall fix a date for hearing the case and after affording an opportunity of personal hearing to the petitioner Management or their authorised representative, take a fresh decision in the matter and if satisfied may clarify, verify or even rectify and subject to such orders and it is open to the first respondent to pass further orders under the provisions of the Act.

12. In the light of the above direction, the impugned demand as well as the show cause notice for prosecution has to be necessarily kept in abeyance till the final decision is taken by the first respondent in terms of the above direction.

13.Accordingly, the Writ Petition is allowed on the aforesaid terms and subject to the above direction and till final orders are passed by the first respondent in terms of the above direction, no coercive action shall be initiated against the petitioner. In the light of the above direction, it is open to the first respondent to receive the contributions payable by the petitioner as an employer from April 2014, subject to further orders. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpa

To

1. The Assistant Provident Fund
 Commissioner (Compliance)
 Employees Provident Fund Organisation
 Sub-Regional Office
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2. The Enforcement Officer
 Employees Provident Fund Organisation
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+1cc to Mr.K.Gunasekaran, Advocate, S.R.No.62394
+2cc's to Dr.FR.A.Xavier Arulraj, Advocate, S.R.No.62559

W.P. No.9715 of 2015

VSN(CO)
CA(30/11/2015)