

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.04.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No. 13647 of 2016
and
W.M.P.No.11941 of 2016

M/s.Anglo French Textiles
Puducheery Textile Corporation Ltd.,
Cuddalore Road, Mudaliarpet,
Puducherry. ...Petitioner

Vs

1. The Central Provident Fund Commissioner,
Bhavishya Nidhi Bhavan,
No.14, Bhikaji Cama Place,
New Delhi - 110 066.
2. The Deputy Director (Recovery)
Bhavishya Nidhi Bhavan,
No.14, Bhikaji Cama Place,
New Delhi - 110 066.Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the second respondent in his proceedings No.RRC-II 18 (29) 2015/TN, dated 04.01.2016, and to quash the same, and to forbear the respondents from recovering the damages under Section 14-B and interest under Section 7 Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

For Petitioner : Mrs.N.Mala

For Respondent : Mr.R.Vishnu for M/s.K.Ramu

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O R D E R

Heard Mrs.N.Mala, the learned counsel appearing for the petitioner and Mr.R.Vishnu for Mr.K.Ramu, learned counsel, accepting notice for respondent/Organization. With the consent of parties, the main Writ Petition is taken up for final disposal at the stage of admission.

2. The petitioner has questioned the order passed by the second respondent, dated 04.01.2016, by which, their request for waiver of damages, penalty and interest has been rejected.

3. Admittedly, as against the levy of damage and penalty, the petitioner has preferred an Appeal, and this Appeal ought to have been heard by the Southern Bench of the Employees' Provident Fund Appellate Tribunal, however, since there is no Presiding Officer, and the Southern Bench is not functioning, the petitioner have preferred Appeal before the Employees' Provident Fund Appellate Tribunal, New Delhi. The Appeal, so filed on 10.03.2015 is pending, wherein, the petitioner has also sought for an interim relief. Whiles, the petitioner has approached the first respondent with request to waive the damages and penalty as well as the interest.

4. The issue would be as to whether such an application could be directed to be considered by issuing a Writ of Mandamus. There will be two stumbling blocks for granting such relief. Firstly, the petitioner has already availed the appeal remedy and the Appellate Tribunal is seized of the matter, and it is a question of time before the Southern Bench of the Appellate Tribunal is constituted and the matter is heard on merits. The second embargo would be that the petitioner Industry is not sick industrial company, and the matter is not pending before the Board for Industrial Finance and Reconstruction (BIFR). In cases, where Appeals ought to have been filed before the Southern Bench of the Appellate Tribunal, and have been filed before the Tribunal at New Delhi, the Hon'ble Supreme Court has passed general orders, protecting the interest of the appellants filing those Appeals, and restrained the Department from initiating any coercive action till the Appeals are heard by the Southern Bench, after it is duly constituted. This benefit can accrue to the petitioner also, since the Appeal is now pending before the Appellate Tribunal, at New Delhi.

5. Thus, while declining to grant the relief sought for by the petitioner in this Writ Petition, there will be a direction to the second respondent not to initiate any coercive action pursuant to the order, levying damages and penalty, till the Stay Application filed in connection with the Appeal preferred by the petitioner before the Appellate Tribunal is heard and decided by the Southern Bench of the Appellate Tribunal at Bangalore. It is made clear that the protective order granted by the Hon'ble Supreme Court will enure in favour of the petitioner only in respect of penalty and damages, and the payment of interest being the statutory, the petitioner is bound to pay the same.

6. With the above observations, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Central Provident Fund Commissioner,
Bhavishya Nidhi Bhavan,
No.14, Bhikaji Cama Place,
New Delhi - 110 066.
2. The Deputy Director (Recovery)
Bhavishya Nidhi Bhavan,
No.14, Bhikaji Cama Place,
New Delhi - 110 066.

Copy to

Employees Provident Fund Appellate Tribunal,
New Delhi.

+1cc to Mrs.N.Mala, Advocate, S.R.No.23077
+1cc to Mr.K.Ramu, Advocate, S.R.No.23122

सत्यमेव जयते

Writ Petition No. 13647 of 2016

s/S[co]
srg 26/04/2016

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