

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.19801 to 19875 of 2015
& W.P.Nos.20048 to 20122 of 2015
& W.P.Nos.20882 to 20941 of 2015

T.THUTHIVANAN	...PETITIONER in WP No.19801 of 2015
C.SELVARAJ	...PETITIONER in WP No.19802 of 2015
K.THIYAGARAJAN	...PETITIONER in WP No.19803 of 2015
R.THIYAGARAJAN	...PETITIONER in WP No.19804 of 2015
T.VADIVEL	...PETITIONER in WP No.19805 of 2015
K.MEENAKASHI SUNDARAM	...PETITIONER in WP No.19806 of 2015
S.VISHVANATHAN	...PETITIONER in WP No.19807 of 2015
P.PALANISAMY	...PETITIONER in WP No.19808 of 2015
M.VENKATESAN	...PETITIONER in WP No.19809 of 2015
S.PALANISAMY	...PETITIONER in WP No.19810 of 2015
C.SUNDARAM	...PETITIONER in WP No.19811 of 2015
C.SIVALINGAM	...PETITIONER in WP No.19812 of 2015
V.MOHAN	...PETITIONER in WP No.19813 of 2015
P.SATHASHIVAM	...PETITIONER in WP No.19814 of 2015
P.SITHAYAN	...PETITIONER in WP No.19815 of 2015
V.SHANMUGAVEL	...PETITIONER in WP No.19816 of 2015
T.SELVARAJ	...PETITIONER in WP No.19817 of 2015
V.RAMASAMY	...PETITIONER in WP No.19818 of 2015
R.SIVAGNANAM	...PETITIONER in WP No.19819 of 2015
S.CHINNATHAMBI	...PETITIONER in WP No.19820 of 2015
M.ASHOK KUMAR	...PETITIONER in WP No.19821 of 2015
K.JAYARAMAN	...PETITIONER in WP No.19822 of 2015
N.VELMURUGAN	...PETITIONER in WP No.19823 of 2015
P.SUBRAMANI	...PETITIONER in WP No.19824 of 2015
A.KUPPUSAMY	...PETITIONER in WP No.19825 of 2015
M.RAJENDRAN	...PETITIONER in WP No.19826 of 2015
C.MANICKAM	...PETITIONER in WP No.19827 of 2015
P.MURUGAN	...PETITIONER in WP No.19828 of 2015
A.SOMASUNDRAM	...PETITIONER in WP No.19829 of 2015
S.UMAPATHI	...PETITIONER in WP No.19830 of 2015
R.CHINNASAMY	...PETITIONER in WP No.19831 of 2015
J.GOPALAKRISHNAN	...PETITIONER in WP No.19832 of 2015
P.MANICKAM	...PETITIONER in WP No.19833 of 2015
K.NAGARAJAN	...PETITIONER in WP No.19834 of 2015
V.P.PERUMAL	...PETITIONER in WP No.19835 of 2015
R.MADHU	...PETITIONER in WP No.19836 of 2015
S.TAMILSELVAM	...PETITIONER in WP No.19837 of 2015
A.GOPAL	...PETITIONER in WP No.19838 of 2015
V.RAVI	...PETITIONER in WP No.19839 of 2015
P.SHANMUGAM	...PETITIONER in WP No.19840 of 2015

M.MURUGAN	...PETITIONER in WP No.19841 of 2015
S.MAADHAIYAN	...PETITIONER in WP No.19842 of 2015
K.RADHA	...PETITIONER in WP No.19843 of 2015
K.RAJAMANICKAM	...PETITIONER in WP No.19844 of 2015
K.MOHAN	...PETITIONER in WP No.19845 of 2015
S.LOORDHUSAMY	...PETITIONER in WP No.19846 of 2015
R.VASUDEVAN	...PETITIONER in WP No.19847 of 2015
P.MURUGAN	...PETITIONER in WP No.19848 of 2015
M.MURUGESAN	...PETITIONER in WP No.19849 of 2015
K.SOMU	...PETITIONER in WP No.19850 of 2015
M.KITTUSAMY	...PETITIONER in WP No.19851 of 2015
M.PADMARAJ	...PETITIONER in WP No.19852 of 2015
R.RAMAMOORTHY	...PETITIONER in WP No.19853 of 2015
S.SELVARAJ	...PETITIONER in WP No.19854 of 2015
P.PALANISAMY	...PETITIONER in WP No.19855 of 2015
C.ELANGOVA	...PETITIONER in WP No.19856 of 2015
C.MANOHRAN	...PETITIONER in WP No.19857 of 2015
M.PACHIANNAN	...PETITIONER in WP No.19858 of 2015
M.KUMARAVEL	...PETITIONER in WP No.19859 of 2015
S.SUBRAMANI	...PETITIONER in WP No.19860 of 2015
S.KUMAR	...PETITIONER in WP No.19861 of 2015
P.BASKARAN	...PETITIONER in WP No.19862 of 2015
M.PARAMESWARAN	...PETITIONER in WP No.19863 of 2015
V.RADHAKRISHNAN	...PETITIONER in WP No.19864 of 2015
A.CHOKKALINGAM	...PETITIONER in WP No.19865 of 2015
A.PUGALENDHI	...PETITIONER in WP No.19866 of 2015
V.DEVARAJAN	...PETITIONER in WP No.19867 of 2015
C.RAVI	...PETITIONER in WP No.19868 of 2015
P.PRAGASAM	...PETITIONER in WP No.19869 of 2015
K.RATHINASAMY	...PETITIONER in WP No.19870 of 2015
K.SHANMUGAM	...PETITIONER in WP No.19871 of 2015
P.MOHANRAJ	...PETITIONER in WP No.19872 of 2015
C.KRISHNAMOORTHY	...PETITIONER in WP No.19873 of 2015
S.SELVARAJ	...PETITIONER in WP No.19874 of 2015
P.ALAGESAN	...PETITIONER in WP No.19875 of 2015
M.RAJENDRAN	...PETITIONER in WP No.20048 of 2015
P.VEERAMUTHU	...PETITIONER in WP No.20049 of 2015
J.SAKTHIVEL	...PETITIONER in WP No.20050 of 2015
S.MANI	...PETITIONER in WP No.20051 of 2015
M.MARIAPPAN	...PETITIONER in WP No.20052 of 2015
V.RAJENDRAN	...PETITIONER in WP No.20053 of 2015
V.RAJENDRAN	...PETITIONER in WP No.20054 of 2015
M.GOPAL	...PETITIONER in WP No.20055 of 2015
G.VENKATESAN	...PETITIONER in WP No.20056 of 2015
K.KASILINGAM	...PETITIONER in WP No.20057 of 2015
P.ANNAMALAI	...PETITIONER in WP No.20058 of 2015
R.RAJA	...PETITIONER in WP No.20059 of 2015
P.AMMASI	...PETITIONER in WP No.20060 of 2015
M.THANGAMANI	...PETITIONER in WP No.20061 of 2015
P.RAJAMANI	...PETITIONER in WP No.20062 of 2015
C.PERUMAL	...PETITIONER in WP No.20063 of 2015
P.VELUSAMY	...PETITIONER in WP No.20064 of 2015

P.MADESAN	...PETITIONER in WP No.20065 of 2015
D.VEERAN	...PETITIONER in WP No.20066 of 2015
N.RAJA	...PETITIONER in WP No.20067 of 2015
A.BOOPATHI	...PETITIONER in WP No.20068 of 2015
R.MURUGAVEL	...PETITIONER in WP No.20069 of 2015
P.MARIMUTHU	...PETITIONER in WP No.20070 of 2015
P.SOUNDARARAJAN	...PETITIONER in WP No.20071 of 2015
S.UMAPATHI	...PETITIONER in WP No.20072 of 2015
G.SELLAPERUMAL	...PETITIONER in WP No.20073 of 2015
S.SURESH	...PETITIONER in WP No.20074 of 2015
M.FRANCIS XAVIER	...PETITIONER in WP No.20075 of 2015
P.SEKAR	...PETITIONER in WP No.20076 of 2015
K.AMMASI	...PETITIONER in WP No.20077 of 2015
A.KANNAN	...PETITIONER in WP No.20078 of 2015
R.SUNDARAM	...PETITIONER in WP No.20079 of 2015
P.SAMPATH	...PETITIONER in WP No.20080 of 2015
R.SUBRAMANI	...PETITIONER in WP No.20081 of 2015
K.PERUMAL	...PETITIONER in WP No.20082 of 2015
C.MAHALINGAM	...PETITIONER in WP No.20083 of 2015
P.MURUGESAN	...PETITIONER in WP No.20084 of 2015
P.SETTU	...PETITIONER in WP No.20085 of 2015
P.ARUMUGAM	...PETITIONER in WP No.20086 of 2015
P.GOVINDARAJ	...PETITIONER in WP No.20087 of 2015
A.KUMARAVEL	...PETITIONER in WP No.20088 of 2015
P.RAMASAMY	...PETITIONER in WP No.20089 of 2015
A.DHARASINGH	...PETITIONER in WP No.20090 of 2015
C.PALANISAMY	...PETITIONER in WP No.20091 of 2015
P.THANGAVEL	...PETITIONER in WP No.20092 of 2015
R.S.ILANGO VAN	...PETITIONER in WP No.20093 of 2015
K.RAJA	...PETITIONER in WP No.20094 of 2015
V.CHELLAPPAN	...PETITIONER in WP No.20095 of 2015
V.AYYAMPERUMAL	...PETITIONER in WP No.20096 of 2015
D.PURUSOTHAMAN	...PETITIONER in WP No.20097 of 2015
S.CHANDRASEKAR	...PETITIONER in WP No.20098 of 2015
S.DHANAPAL	...PETITIONER in WP No.20099 of 2015
G.RATHINASAMY	...PETITIONER in WP No.20100 of 2015
E.SELVAM	...PETITIONER in WP No.20101 of 2015
I.SELVARAJ	...PETITIONER in WP No.20102 of 2015
I.GOVINDASAMY	...PETITIONER in WP No.20103 of 2015
S.VENKATESAN	...PETITIONER in WP No.20104 of 2015
R.NATARAJAN	...PETITIONER in WP No.20105 of 2015
T.SELVAKUMAR	...PETITIONER in WP No.20106 of 2015
C.MANI	...PETITIONER in WP No.20107 of 2015
P.C.SENGOTTAIYAN	...PETITIONER in WP No.20108 of 2015
P.NAGARAJAN	...PETITIONER in WP No.20109 of 2015
J.SHANMUGAM	...PETITIONER in WP No.20110 of 2015
T.RAJA	...PETITIONER in WP No.20111 of 2015
A.SUBRAMANI	...PETITIONER in WP No.20112 of 2015
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P.PANEERSELVAM ...PETITIONER in WP No.20117 of 2015
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S.CHANDRASEKAR ...PETITIONER in WP No.20120 of 2015
P.MADESWARAN ...PETITIONER in WP No.20121 of 2015
A.MUTHUSAMY ...PETITIONER in WP No.20122 of 2015
M.GUNASEKARAN ...PETITIONER in WP No.20882 of 2015
C.RATHINASAMY ...PETITIONER in WP No.20883 of 2015
T.NAGARAJAN ...PETITIONER in WP No.20884 of 2015
V.GOVINDAN ...PETITIONER in WP No.20885 of 2015
P.GOVINDARAJ ...PETITIONER in WP No.20886 of 2015
M.SIDDESWARAN ...PETITIONER in WP No.20887 of 2015
C.SUBRAMANI ...PETITIONER in WP No.20888 of 2015
P.PALANISAMY ...PETITIONER in WP No.20889 of 2015
S.MANI ...PETITIONER in WP No.20890 of 2015
P.SADANANDAM ...PETITIONER in WP No.20891 of 2015
L.DHANRAJ ...PETITIONER in WP No.20892 of 2015
M.LOGANATHAN ...PETITIONER in WP No.20893 of 2015
M.SELVARAJ ...PETITIONER in WP No.20894 of 2015
P.B.SUNDARARAJAN ...PETITIONER in WP No.20895 of 2015
J.SELVAM ...PETITIONER in WP No.20896 of 2015
V.NAGARAJAN ...PETITIONER in WP No.20897 of 2015
K.SEKAR ...PETITIONER in WP No.20898 of 2015
K.GOVINDASAMY ...PETITIONER in WP No.20899 of 2015
S.SAMPATH ...PETITIONER in WP No.20900 of 2015
P.MANICKASUNDARAM ...PETITIONER in WP No.20901 of 2015
V.PALANISAMY ...PETITIONER in WP No.20902 of 2015
N.LAKSHMANAN ...PETITIONER in WP No.20903 of 2015
M.LAKSHMANAN ...PETITIONER in WP No.20904 of 2015
V.MARIMUTHU ...PETITIONER in WP No.20905 of 2015
K.JEEVANANDAM ...PETITIONER in WP No.20906 of 2015
L.KANDASAMY ...PETITIONER in WP No.20907 of 2015
P.BALUSAMY ...PETITIONER in WP No.20908 of 2015
S.RAMADASS ...PETITIONER in WP No.20909 of 2015
S.SAKTHIVEL ...PETITIONER in WP No.20910 of 2015
C.SIVAKUMAR ...PETITIONER in WP No.20911 of 2015
S.SEKAR ...PETITIONER in WP No.20912 of 2015
N.DADUREDDY ...PETITIONER in WP No.20913 of 2015
V.VIJAYAKUMAR ...PETITIONER in WP No.20914 of 2015
K.DASARATHAN ...PETITIONER in WP No.20915 of 2015
R.MANOCHARAN ...PETITIONER in WP No.20916 of 2015
C.SENGOTTUVEL ...PETITIONER in WP No.20917 of 2015
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M.SIVAKUMAR	...PETITIONER in WP No.20935 of 2015
S.PACHIANNAN	...PETITIONER in WP No.20936 of 2015
M.RAJAKANNU	...PETITIONER in WP No.20937 of 2015
P.RAJAKANNU	...PETITIONER in WP No.20938 of 2015
M.PALANISAMY	...PETITIONER in WP No.20939 of 2015
T.NALLATHAMBI	...PETITIONER in WP No.20940 of 2015
K.SARAVANAN	...PETITIONER in WP No.20941 of 2015

Vs.

1. The Regional Provident Fund Commissioner
Employees Provident Fund Organisation,
Regional Office, Royapettah High Road,
Royapettah, Chennai-14.
2. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub Regional Office,
Sree Jayalakshmi Plaza,
Swarnapuri, Salem 636 004
3. The Management of Sri Agilandeswari Mills Pvt. Ltd.,
rep. by the Official Liquidator,
Attached to the High Court of Madras,
Corporation Bhavan, 2nd Floor,
29, Rajaji Salai, Ch-1. ...Respondents in all WPs

PRAYER in all WRIT PETITIONS : Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration, declaring that the action of the respondents 1 and 2 in not settling the PF amounts and not sanctioning regular monthly pension/family pension to the petitioner for his entire service up to the date of closure/winding up of the company on the ground that the erstwhile management of Sree Akilandeswari Mills failed to submit returns of Forms 3A and 6A for the period from October 1998 to 6.10.2007, the date of winding up of the company and refusing to count the said period as service and not sanctioning pension based on the salary payable on the date of winding up of the company, as illegal and unsustainable and consequently, direct the respondents 1 and 2 to accept the returns submitted by the petitioner in Forms 3A and 6A and to settle forthwith any pay of the petitioner, the entire PF amounts and regular monthly pension by counting the service of

the petitioner upto 28.10.2008 and based on the salary payable to the petitioner as on 28.10.2008, with arrears, together with interest at the rate of 12% per annum, award exemplary costs.

For Petitioner : Mr.V.Ajoy Ghose
for Mr.D.Balachandran

For Respondents 1 & 2 : Mrs.R.Meenakshi

For Official Liquidator : Mr.Denning K. Babu
Assistant Official Liquidator

For Intervenor : Mr.A.V. Arun

COMMON ORDER

Since the issue involved in all these writ petitions are identical and the prayer sought for is also identical, with the consent of the learned counsel for the parties, these writ petitions are taken up together for final disposal.

2. Heard Mr. Ajay Ghosh for Mr.D.Balachandran, learned counsel for the petitioner and R.Meenakshi, learned Standing Counsel appearing for the respondents 1 and 2 and the third respondent having been served with notice and their name printed in the cause list, none appears for them. Mr.Deming K. Babu, learned Assistant Official Liquidator is also present and this Court has heard him.

3. The petitioners are all erstwhile employees of the third respondent Mill, who had Provident Fund Account with the second respondent. Though the third respondent had recovered contributions from the petitioners/employees, the same were not promptly remitted to the second respondent, as a result of which, proceedings under the Employees Provident Fund and Materials Provisions Act and the schemes framed thereunder has been initiated and action was initiated under Section 17(A) of the said Act, so as to determine the Provident Fund dues payable to the employees from October 1998 to October 2008.

4. In the counter affidavit filed by the first and second respondents, in paragraph-4, it has been stated that the proceedings were conducted and the dues payable by the third respondent/Management was determined vide orders dated 22.07.1999, 28.07.2000, 17.11.2000, 06.08.2001, 11.10.2004, 01.03.2006, 06.11.2006, 26.04.2007, 25.06.2007 and 23.06.2008. The third respondent did not challenge the orders determining the dues payable by the respondent organization. Consequently, action was initiated, under Section 8 of the

Act, by issuing an auction notice. The said impugned notice came to be challenged by M/s.Syhmis Granites in W.P. No: 22040 of 2008, stating that they have purchased the properties of the third respondent in an auction conducted by the reconstruction company under the provisions of the SARFESI Act and the writ petition was entertained and an order of interim stay was granted, subject to the condition that the employer remits 50% of the Provident Fund dues. In Paragraph 5 of the counter affidavit, it has been admitted that the purchaser has remitted 50% of the PF dues during September 2009 and had also remitted the remaining amount, i.e. the entire dues including the interest, during December 2008, as per the final order dated 17.12.2008. Thus, it is clear that the respondent/organization has recovered the entire amount payable by the third respondent, which was the erstwhile management and that the amount recovered is as per the orders of adjudication passed in exercise of powers conferred under Section 7(A) of the Act. There can be no dispute as regards the said amount, which has been determined by the second respondent by the various orders passed under Section 7(A) of the Act. The only issue which remains for consideration is disbursement of the amounts to the petitioners, who were the erstwhile employees of the third respondent.

5. Learned counsel for the respondent organization submitted that they have to produce the statutory forms, the employee pay slips and the EPF. card etc.,

6. Learned counsel for the petitioners would submit that the petitioners have produced the EPF card and they have also submitted the statutory forms giving all the details and it is submitted that there can be no difficulty in disbursing the amounts to the petitioners/employees. In my view, the necessity of producing forms, pay bills or other documents is superfluous as the second respondent has already adjudicated and determined the Provident Fund payable for the relevant period and passed orders on various dates and by way of illustration if one of the order is perused namely, the order dated 17.12.2008 it is as per the calculation of the department with the available records and such calculation and determination is deemed to be correct.

7. During the course of arguments, this Court posed a query to the learned counsel for the petitioners that the petitioners should not now raise a further plea stating that the contribution computed is incorrect or there are some errors in the amount determined.

8. In response to the query, learned counsel for the petitioners, on instructions, submitted that the petitioners are ready and willing to accept the determination of the Provident Fund as per the orders of the second respondent

passed under Section 7(A) of the Act dated 17.12.2008. In the light of the said submissions, the controversy has become much narrower and the matter could be easily resolved, if appropriate directions are issued to the respondents 1 and 2.

9. As pointed out earlier, the dues payable by the third respondent/erstwhile management has been determined and these are not only Provident Fund dues but also interest and damages quantified by the order dated 17.12.2008 and other similar orders. Therefore, whatever has been recovered from the purchaser of the property, the same can be disbursed to the petitioners/erstwhile employees, in accordance with the individual claims. There is a small dispute as to whether the original claim forms filed by the petitioners on the file of the second respondent has been returned or not? Learned counsel for the second respondent submitted that the forms have been returned, whereas, learned counsel for the petitioners states that the forms have been re-submitted.

10. Without going into such controversy any further, there will be a direction to the petitioners to submit individual forms afresh, along with the copy of this order and on receipt of the said forms, the respondents 1 and 2 shall peruse the same and determine the amount payable for each of the erstwhile employee, which shall be on the basis of the final orders passed by the respondents 1 and 2 on various dates. If there are any discrepancies or any clarifications required, the second respondent can direct one of the representative of the petitioners to come and appear before him, for a discussion and the controversy should be resolved so that the erstwhile employees receive their statutory dues. As the respondent organization has recovered the entire provident fund dues together with interest and damages, it goes without saying that the employees/petitioners are also entitled to the statutory interest which they are entitled to, in terms of the Act and the schemes framed thereunder.

11. The above directions shall be complied with by the respondents 1 and 2, within a period of six weeks from the date of receipt of a copy of this order. As observed earlier during the period during which the forms are processed, if any clarification is required, the representative of the petitioner shall appear in person before the second respondent and furnish all the particulars/clarifications.

12. After this Court dictated the above order, there was an intervenor represented by his learned counsel Mr.A.V.Arun. It was contended that he represents the other erstwhile employees, who have not filed the writ petitions, but some of them have approached the Company Court and others were not aware about the legal proceedings. Therefore, before

determining and disbursing the claims of the petitioners, the second respondent shall give wide publicity of the methodology adopted pursuant to this order and call upon the other erstwhile employees of the third respondent/management to file similar forms, to enable the second respondent to process the same. These writ petitions are disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

smi

To

1. The Regional Provident Fund Commissioner
Employees Provident Fund Organisation,
Regional Office, Royapettah High Road,
Royapettah, Chennai-14.
2. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub Regional Office,
Sree Jayalakshmi Plaza,
Swarnapuri, Salem 636 004
3. The Management of Sri Agilandeswari Mills Pvt. Ltd.,
rep. by the Official Liquidator,
Attached to the High Court of Madras,
Corporation Bhavan, 2nd Floor,
29, Rajaji Salai, Ch-1.

+1cc to M/s.R.Meenakshi, Advocate, S.R.No.6952

+2cc's to Mr.D.Balachandran, Advocate, S.R.No.7010

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CNR(CO)
CA(11/03/2016)