

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.03.2016

Coram

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

Writ Petition No.30211 of 2012

Tamil Nadu Forest Plantation  
Corporation Employees' Union  
(Regn No.262/1978-TRI)  
rep. by its President,  
Karur Main Road,  
Mallachipuram, Kambarasam Pettai,  
Trichy - 602 101.

...Petitioner

Vs.

1. The State of Tamil Nadu,  
rep. by the Secretary to Government,  
Finance Department,  
Fort St. George,  
Chennai - 600 009.
2. The Chairman,  
Tamil Nadu Forest Plantation Corporation Ltd.,  
(TAFCON)  
No.30, Ghandimandapam Road,  
Kotturpuram, Chennai - 600085.
3. The Managing Director,  
Tamil Nadu Forest Plantation Corporation Ltd.,  
(TAFCON)  
Karur Main Road,  
Mallachipuram, Kambarasam Pettai,  
Trichy - 602 101.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the second respondent to pay the employers contribution equal to that of the employees contribution without fixing any upper ceiling, towards Employees Provident Fund Scheme with all arrears and interests thereon.

For Petitioner : M/s.V.S.Usha Rani  
For Respondent-1 : Mr.R.Rajeswaran  
Special Government Pleader  
For Respondents 2 & 3 : Mr.N.Inbanathan  
Government Advocate (Forest)

O R D E R

The petitioner has filed this Writ Petition seeking for issuance of Writ of Mandamus, directing the second respondent to pay the contribution, equal to that of the employees contribution, without fixing any upper ceiling, towards Employees Provident Fund Scheme with all arrears and interests thereon.

2. The petitioner is an Employees' Union, consisting of workers, working in the second respondent-Corporation, viz., Tamil Nadu Forest Plantation Corporation Limited. The petitioner's case is that, the scheme formulated under the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter, referred to as 'the Act') contemplates contribution of minimum 12% of the salary. According to the petitioner-Union, the respondent/Corporation has fixed an arbitrary sealing of Rs.780/- per month, and paying contribution on the said amount and the other amounts have not been contributed, while, there has been deduction of 12% of the salary, dearness allowance, etc., towards the employees' contribution.

3. The Managing Director of the respondent-Corporation has filed a counter affidavit, wherein, it is stated that the management of TAFCON is contributing 12% on Rs.6,500/-, which is well within the ambit of the rules in force. As per the provisions of the Act, any one, who joins any covered establishment on or after 16.11.1995, is supposed to compulsorily join the scheme, provided his/her salary/wage is less than Rs.6,500/- per month at the date of appointment. Further, it is stated that, if the employee opts to contribute more than the prescribed percentage, he/she can do so, but, the employer is not bound to contribute at the enhanced rate. It is contended that, a person, who is already a member, continues to be so, even if his pay exceeds Rs.6500/-, and in such a case, the contribution is limited to Rs.6,500/-. In this regard, para 26 A (2) of Employees' Provident Fund scheme has been relied on. Further, the respondent-Corporation relied on the decision of the Karnataka High Court in the case of Motor Industries Co Ltd., Vs. Regional Provident Fund Commissioner and others) reported in (2000) LLR 1309 and stated that the contribution paid by the employer is perfectly valid and well within the ambit of the rules in force.

4. Heard the learned counsels for the parties.

5. The fundamental mistake committed by the petitioner-Union is in not approaching the Authority under the provisions of the Act, if they had any grievance. In fact, in this Writ Petition, the Authority functioning under the said Act has not been impleaded as respondent. One more issue is that, the petitioner is an Employees' Union, representing the case of its members, who are employed in different categories, and whose scale of pay would differ. Therefore, essentially, it is the individual grievance of the employees, for which, a collective representation has been made, and when it comes to quantum of contribution, each case has to be considered and dealt with separately. Therefore, the relief sought for herein cannot be granted, since the matter requires adjudication into the factual issues, more so, in the light of the stand taken in the counter affidavit. However, this does not mean that the petitioner is without any remedy. Considering the nature of grievance expressed, the petitioner is granted liberty to approach the competent authority by filing appropriate Petition under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act. If such Petition is filed, the Authority shall consider the same in accordance with law after notice to the respondent/Corporation, viz., TAFCON.

6. With the above observations, the Writ Petition is dismissed. No costs.  
sd

s/d-  
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Govt.  
State of Tamil Nadu,  
Finance Department,  
Fort St. George,  
Chennai - 600 009.
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+ 1 cc to Mr.V.S.Usharani, Advocate SR 17235

+ 1 cc to Govt.Pleader SR 17362

sv(co)  
prk11/4

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