IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P. No. 35575 of 2015

The Regional Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishya Nidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore - 641 018. ...Petitioner

Vs

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core-II,
4th Floor, Lakshmi Nagar,
New Delhi - 110 092

2. M/s.South Rotary Nursery and Primary School,
Nataraja Theatre Road,
Alangadu, Tiruppur - 641 604 .. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of certiorari, to call for the records relating to the proceedings of first respondent dated 03.11.2014 in ATA.No.855(13)2012 and quash the order passed therein.

For Petitioner : Ms.R.Meenakshi
For Respondent - 1 : Tribunal
For Respondent - 2 : No Appearance

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ORDER

Heard Ms.R.Meenakshi, learned counsel appearing for the petitioner.

2. This Writ Petition has been filed by the Regional Provident Fund Commissioner, Coimbatore, challenging the order passed by the Employees Provident Fund Appellate Tribunal, New Delhi, dated 03.11.2014. By the said order, the Appellate Tribunal allowed the appeal filed by the second respondent School and thereby set aside the order passed by the Writ Petitioner on 03.09.2012.

3. The case of the writ petitioner is that the second respondent institution is covered under the Provisions of the Employees Provident Fund

and Miscellaneous Provisions Act, 1952, hereinafter referred to as the Act, and that the institution failed to remit the Provident Fund, Insurance Fund and Employees' Pension Fund Contributions and administrative charges towards Provident Fund and Insurance Fund dues for the month from June 2008 to February 2012 in accordance with the provisions of the Act, 1976 and 1995 schemes. Therefore, a notice was issued to the second respondent on 30.12.2011 to appear before the petitioner with supporting documents / records to represent their case. The case was heard and the second respondent institution was represented by a Counsel. It appears that at the instance of the second respondent institution, the matter was adjourned on several dates and the case was finally heard on 07.06.2012. The objection raised by the second respondent-School was that they have not employed more than 18 employees and that, therefore, they are not covered under the provisions of the Act. Further, it was submitted that the records in support of the stand of the School were available with their Auditor and that they were not afforded a reasonable opportunity when the Enforcement Officer visited their premises.

4. The petitioner considered the said submissions and taking note of the fact that no tangible records were produced by the School held that a person, who works for a day - whatever may be the nomenclature - and gets wages directly or indirectly through the employer is termed as an ''employee'' working for their establishment and therefore, the second respondent is liable to pay the amounts demanded and accordingly, an order came to be passed on 03.09.2012.

5. Aggrieved by the said order, the second respondent preferred an appeal before the Appellate Tribunal. Before the Appellate Tribunal, the primary ground on which the impugned order was challenged is that there was violation of principles of natural justice and that the petitioner / the Regional Authority did not afford a reasonable opportunity to the petitioner to cross examine the Enforcement Officer and straight away accepted the report of the Enforcement Officer and issued the demand.

6. The Appellate Tribunal, after considering the case as projected by the second respondent, held that in terms of Section 7(A) of the Act, the Commissioner is authorised to enforce attendance in person and also examine any person on oath and he has the power requiring discover and production of documents. Holding that the petitioner / competent authority did not afford such an opportunity, the Tribunal held that the order dated 03.09.2012 suffers from serious infirmity and accordingly allowed the appeal and set aside the order. Challenging the same, the petitioner is before this Court seeking to quash the order passed by the Appellate Tribunal.

7. The learned Standing Counsel appearing for the petitioner organisation contended that the order passed by the Appellate Tribunal is arbitrary and ultra-vires the powers conferred under Section 7(L) of the Act read with Rule 7 (2) of the Employees Provident Fund Appellate Authority (Procedure Rules), 1997. Further, it is submitted that the Enforcement officer has given a report not only based on the income and

expenditure statement but, based on the salary register of the establishment and thus, it is not a hypothetical assessment. Further, it is submitted that the impugned order passed by the competent authority is after following the principles of natural justice and after conducting due enquiry and ample opportunity was given to the second respondent institution. However, they did not co-operate with the enquiry.

8. The learned Counsel appearing for the second respondent sought to sustain the order of the Tribunal and submitted that the Tribunal having found that no opportunity was granted to the institution, rightly allowed the appeal.

9. After hearing the learned counsels appearing for the parties and after perusing the materials placed on record, it is seen that it is not the case where the Regional Authority did not afford an opportunity to the second respondent institution. Opportunity was given and the institution was represented by Counsel and the record of the proceedings shows that the matter was adjourned several times at the instance of the institution.

10. Be that as it may, we have to examine the correctness of the order passed by the Appellate Tribunal. The Appellate Tribunal held that the Enforcement Officer should have been summoned and he should have been made available for cross examination and that in spite of request by the institution such opportunity was not granted. If that be the case, then the Appellate Authority ought to have interfered with the order of the Regional Authority and remanded the matter for fresh consideration since that by itself is no ground to set aside the entire demand. This legal position cannot be disputed by the second respondent. Considering the fact that the second respondent is an institution said to have been funded by a charitable organization, this Court is of the view that one more opportunity could be granted to the institution to put forth their submissions. However, the institution shall be bound by a strict time frame, within which the enquiry has to be completed.

11. In the light of the above, the Writ Petition is allowed and the impugned order passed by the Appellate Tribunal is set aside and the matter is remanded to the petitioner / Authority for consideration. The second respondent - management shall appear before the petitioner on the day notified in writing and shall produce all available records; on the same day make their submissions and thereafter the petitioner shall consider the records so produced and pass orders in accordance with law within a period of three weeks from the date on which the date of hearing is fixed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

srn

To

The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core-II,
4th Floor, Lakshmi Nagar,
New Delhi - 110 092

+1 CC to Ms.R.Meenakshi, Advocate

CO-SV
ths : 27.01.2016

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