

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.03.2016

Coram

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

Writ Petition No.9275 of 2016
and
W.M.P.No.8244 of 2016

Archana Institute of Technology,
rep. by its Chairman D.Jeyapal,
N.H.7, Salem Main Road,
Thimmapuram, Krishnagiri,
Krishnagiri District.

...Petitioner

Vs.

The Assistant Provident Fund Commissioner,
& Recovery Officer,
Sub -Regional Office,
SJ Plaza, Swarnapuri, Salem - 636 004.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the respondent, vide TN/SLM/90896/8F/Recovery/2015-2016, dated 05.02.2016, and to quash the same, and further, to direct the respondent to pass appropriate orders in the light of the documents produced by the petitioner.

For Petitioner : Mr.R.Kannan

For Respondent : Mrs.R.Meenakshi
Central Government Standing Counsel

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O R D E R

Heard the learned counsel appearing for the petitioner and the learned Central Government Standing Counsel for the respondent.

2. The petitioner is an Educational Institution, and they have filed this Writ Petition, challenging the order of attachment passed by the respondent/Recovery Officer, by which, the petitioner's Bank account has been frozen, for recovery of

provident fund dues for the period from June, 2009 to June, 2013, amounting to 41,92,301/- and costs of Rs.6950/-. From the impugned order, it is seen that there is no damages, or interest levied, but the demand, for which, the attachment order has been passed is only with regard to the provident fund dues.

3. The learned counsel appearing for the petitioner made an earnest endeavour to convince this Court by stating that there is a mistake in the manner, in which, the respondent-Organization has arrived at the amount, and they have also included the teaching and non teaching staff together.

4. The above submission made by the learned counsel for the petitioner could have been considered by this Court, but for the past conduct of the petitioner, this Court is not inclined to consider the same, as the petitioner has earlier approached this Court by filing a Writ Petition, being W.P.No.8778 of 2015, to quash the proceedings, dated 18.03.2015, on the ground that the said proceedings/impugned order was an ex parte order. The learned Standing Counsel for the respondent/Department opposed the prayer sought for therein, by contending that 19 adjournments were granted by the respondent, in spite of the same, the petitioner did not appear and produce documents, which resulted in the passing of the order, dated 18.03.2015. It was further submitted that, if at all the petitioner is aggrieved, the petitioner has to approach the Appellate Authority under the relevant provisions of the Act. This Court, after hearing the learned counsels for the parties, took into consideration the fact that the petitioner is an Educational Institution, and that the order, dated 18.03.2015 was an ex parte order, and opined that one more opportunity could be granted to the petitioner to place all materials before the Authority to demonstrate as to how they would not been covered under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, and this Court made it clear that the said opportunity will be subject to stringent conditions. Accordingly, the Writ Petition was disposed of, by order, dated 03.11.2015, by directing the petitioner to deposit a sum of Rs.10,00,000/- before the respondent within a period of eight weeks from the date of receipt of a copy of that order. On such deposit, the petitioner was directed to be granted an opportunity of personal hearing. Further, it was made clear that, if the petitioner fails to comply with the condition order within the time stipulated, the Writ Petition shall stand dismissed and the respondent/Organization would be entitled to proceed with the recovery process. It is an admitted fact that the petitioner did not comply with the order, dated 03.11.2015, passed by this Court in the Writ Petition referred to above, nor did the petitioner file any Appeal against the order before

the Hon'ble Division Bench. Therefore, it is too late for the petitioner to now come and clamour for indulgence unconditionally that he should be permitted to approach the Authority and the Authority should be directed to lift the order of attachment.

5. It is submitted by the learned counsel appearing for the petitioner that for the past two years, their Institution has been placed under non admission category, since approval has not been granted by All India Council for Technical Education. Further, it is submitted that the students, who have been admitted in the earlier batch, are pursuing their studies and all the teaching and non teaching staff are with the Institution. Taking into consideration that the petitioner is an Educational Institution, this Court is inclined to show one more indulgence, subject to the condition that the petitioner pays a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) within a period of three weeks from the date of receipt of a copy of this order. If the petitioner pays the said amount, then, they shall be entitled to place their documents and canvass all the points before the Authority. On the other hand, if the petitioner defaults in payment, the Organization is entitled to recover dues from the Bank account, which has been attached. Till the expiry of three weeks, the respondent/Organization shall not withdraw any money from the Bank account and the order of attachment will continue.

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

सत्यमेव जयते

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Provident Fund Commissioner,
& Recovery Officer,
Sub -Regional Office,
SJ Plaza, Swarnapuri, Salem - 636 004

+2ccs to Mr.R. Kannan, Advocate, S.R.No.16541
+1cc to Mr.R. Meenakshi, Advocate, S.R.No.16422

MP(CO)
EU(30/03/2016)

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