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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2011

CORAM:

THE HON'BLE MS. JUSTICE K. SUGUNA

AND

THE HON'BLE MR. JUSTICE A. ARUMUGHASWAMY

W.A. (MD) No.294 of 2011 & M.P. (MD) No.2 of 2011

General Manager - Telecom
Bharath Sanchar Nigam Limited
Vannarapettai
Tirunelveli

..Appellant/Appellant

vs.

The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
Sub-Regional Office
10/A3, St. Thomas Road
High Grounds
Tirunelveli

..Respondent/Respondent

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 01.12.2010 passed in W.P. (MD) No.1262 of 2006.

W.P.No.1262 of 2006:- Writ Petition filed under Article 226 of Constitution of India for the issue of a Writ of Certiorari calling for the records relating to the respondent in his proceedings dated 17.01.2006 in the matter of inquiry under Section 7(A) in respect of the establishment, general Manager, Contractors (Tirunelveli) T.N/ 55509 and quash the same.

For appellant Mr. K. Govindarajan
For respondent Mr. K. Murali Shankar

JUDGMENT

(Judgment of the Court was delivered by K. SUGUNA, J.)

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W.P. (MD) No.1262 of 2006 was filed by the appellant herein challenging the notice dated 17.01.2006 by which he was directed to appear for an enquiry under Section 7(A) of the Employees Provident Funds and Miscellaneous Provisions Act ("the Act" for



short). The said writ petition was disposed of by this Court by order dated 01.12.2010, thereby giving liberty to the appellant/writ petitioner to raise all contentions and objections with regard to the issue in question before the Assistant Provident Fund Commissioner. Aggrieved by the said order, the petitioner in the writ petition has filed the present appeal.

2. According to the learned counsel for the appellant/writ petitioner, though the impugned notice is in the form of intimation given to the appellant/writ petitioner to appear for an enquiry, in fact, by the said notice, the respondent has directed the appellant/writ petitioner to pay the Provident Fund contribution to the contract employees also; whereas, as far as contract employees are concerned, in the appellant establishment, even as per the tender notification, only those contractors who are having code number to their employees are accepted, consequently, the contractor himself is paying contribution to their employees; hence, the question of making payment by the appellant/writ petitioner does not arise.

3. The other point raised by the learned counsel for the appellant/writ petitioner is that even as per the judgment of the Hon'ble Apex Court reported in AIR 1962 SC 1402, Orissa Cement Limited and Others vs. Union of India and Others also, as far as contract employees are concerned, they need not pay Provident Fund. Yet another submission made by the learned counsel for the appellant/writ petitioner is that even as far as the demand notice is concerned, it can only be a prospective and not a retrospective one.

4. On the other hand, it is the stand of the learned Standing Counsel appearing for the respondent that as per the provision under Section 2(f) which reads as follows:

"f. "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and includes any person

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(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the apprentices Act, 1961, (52 of 1961), or under the standing orders of the establishment."

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even for the contract employees, the appellant/writ petitioner has to pay contribution; apart from this, subsequent to the judgment reported in AIR 1962 SC 1402, Orissa Cement Limited and Others vs. Union of India and Others, the scheme has been



amended and as per the amended scheme, even the contract employees are brought under the provisions of this Act; that apart, what is under challenge is only a notice; if at all, the appellant/writ petitioner is having any objection, he can raise the same by attending the enquiry. Based on these submissions, the learned Standing Counsel appearing for the respondent has sought dismissal of the writ appeal.

5. We have considered the above submissions made by the respective learned counsel.

6. Without going into the merits of the issue, as rightly pointed out by the learned Standing Counsel appearing for the respondent, what is under challenge is only a notice directing the appellant/writ petitioner to appear for Section 7(A) enquiry. Apart from this, no final orders have been passed. If the appellant/writ petitioner is having any grievance, he is at liberty to raise all his objections before the authority concerned and the authority concerned is directed to consider the same and pass orders.

According to the learned counsel, the appellant/writ petitioner has been intimated of the notice of hearing. In view of this, giving liberty to the appellant/writ petitioner to raise all his objections, this writ appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed

Sd/-
Deputy Registrar(Accounts)

/True Copy/

Assistant Registrar

To

The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
Sub-Regional Office
10/A3, St. Thomas Road
High Grounds
Tirunelveli

+One cc to Mr.K.GOVindarajan, Advocate, SR.No.13840

cad
rl/3c - 9.6.2011