

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT PETITION No.14772 of 2001

Date: 29.03.2016

Between:

A.V.M. High School, rep.by the Correspondent,
M.A.Waheed, Rajendranagar, R.R. District,
Hyderabad.

.....Petitioner

and

Regional Provident Fund Commissioner, A.P.,
Barkatpura, Hyderabad and others.

.....Respondents

The Court made the following:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

WRIT PETITION No.14772 of 2001

PC: (Per the Hon'ble Sri Justice P.Naveen Rao)

Petitioner is aggrieved by initiation of prosecution in as many as 80 cases for non-compliance of the provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'EPF Act') and sought for direction to the respondents to refrain from initiating prosecution against the petitioner for the alleged non-compliance of the EPF Act prior to the decision of the Division Bench of this Court dated 25.04.2001 in W.P.No.25623 of 1998 and to set aside the prosecution launched against the petitioner.

2. Case of the petitioner is that he is a member of A.P.Private Vidya Samsthala Sangham. The association has taken up the cause of all the members of the association against application of provisions of EPF Act to educational institutions. When the representation of the association for exemption to the members of the association from the provisions of the EPF Act was rejected, the association filed appeal before the EPF Appellate Tribunal. The Appellate Tribunal upheld the contention of the association and set aside the decision of the authority. In view of the same, petitioner was not required to make contribution under the EPF Act. The EPF authorities challenged the order of the Appellate Tribunal in W.P.No.25623 of 1998. After the decision of the Division Bench dated 25.04.2001 allowing the writ petition setting aside the order of the Appellate Tribunal, petitioner started contributing the amounts in accordance with the EPF Act by filing returns on 13.07.2001 for the period 1982 to 1983 and necessary amounts were remitted on 11.07.2001. Petitioner asserts that till the Division Bench of this Court reversed the decision of EPF Appellate Tribunal, there was no obligation on petitioner to make contributions and, therefore, there is no justification to initiate criminal prosecution against the petitioner on the allegation of default of amounts payable by the petitioner prior to the judgment.

3. The educational institutions are also covered by the provisions of the EPF Act. The educational institutions can seek exemption from the

provisions of the EPF Act if they satisfy the following twin conditions as incorporated in Section 16(1)(b) of the EPF Act.

(i) such establishment either should '*belong to*' or '*under the control of*' the Central Government or State Government or setup under any Central or Provincial or State Act; and

(ii) there must exist a scheme or rule framed by the respective governments governing such benefits and such scheme is extended to employees of the institution.

4. There is no whisper in the affidavit filed in support of the writ petition that petitioner has enrolled his staff under the separate provident fund created by the State Government in accordance with the AP Education Act, 1982 or a pension scheme formulated thereunder. Thus, there is no material on record to show that petitioner satisfies the exemption clauses of Section 16(1)(b) of EPF Act.

5. At this stage, it is appropriate to notice that what was assailed before the Appellate Tribunal was only the decision of the EPF authority on the representation submitted by the association seeking general exemption from the provisions of the EPF Act. No order made in exercise of power under Sections 1(3)&(4), 3, 7A, 7B, 7C, 14B of the EPF Act was challenged before the Appellate Tribunal. The Appellate Tribunal has limited jurisdiction and can entertain appeal only if such appeal is filed by the aggrieved person and only if an order is passed by the competent authority under any of the above provisions. At this stage, it is to be noted that aggrieved by the decision of Division Bench dated 25.04.2001 in W.P.No.25623 of 1998, Association filed Civil Appeal No.539 of 2002. By order dated 11.12.2007, Supreme Court remitted the matter for decision afresh. On remand, the writ petition was heard and by separate order, the writ petition is disposed of. The order of EPF Appellate Tribunal is set aside.

6. As seen from the averments in the affidavit filed in support of the

writ petition, criminal cases are launched against the petitioner alleging non-compliance of the provisions of the EPF Act. Thus, *prima facie*, we see no error in initiating penal action by the authority under the EPF Act on the allegation of non-compliance of the provisions of the EPF Act. This Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India cannot go into the validity of the criminal proceedings initiated in exercise of power under the EPF Act at the threshold. Thus, writ petition is misconceived and is accordingly dismissed. It is made clear that we have not expressed any opinion on merits on the claim and it is open to the petitioner to raise all pleas as available in law in STCs initiated against the petitioner by the respondent authorities.

Miscellaneous petitions if any pending shall stand closed. No costs.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date: 29.03.2016

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