

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P. No.707 of 2017

and

W.M.P.Nos.731 and 732 of 2017

M/s.Sangeetha Traders,
Represented by its Partner
Shri Santhosh Kumar Lath ...Petitioner

Vs.

1. The Assistant Provident Fund
Commissioner (C & R),
Employees Provident Fund Organisation,
Regional Office,
37, Royapettah High Road,
Chennai - 600 014.
2. Manoranjan Patanaik
3. R.Kamala Rajan
4. The Branch Manager,
Bank of India,
Royapettah Branch,
Chennai - 600 014. ...Respondents

Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari calling for the records of the first respondent relating to the impugned orders (1) dated 10/11/2016 bearing No.TN/CHN/CC-1/19/TN-48055/Enf/2016 and (2) dated 15/12/2016 bearing No.CHN/CC-1/19/TN-48055/Comp/8F/Regl/2016 issued to the fourth respondent and quash the same.

For Petitioner : Mr.D.Bharatha Chakravarthy
for Mr.T.Sai Krishnan

For Respondents : Mr.A.P.Surya Prakasam for R1
Mr.S.P.Srinivasan for R2 & R3
Mr.F.B.Benjamin George for R4

ORDER

This writ petition has been filed, challenging the order impugned order said to have been passed under Section 7B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act').

2.This is the third round of litigation initiated by the petitioner. On the first occasion, the notice issued by the first respondent calling for enquiry was put into challenge in W.P.No.37929 of 2015. By order dated 18.01.2016, this Court disposed of the said writ petition in the following manner:

"4.As rightly pointed out by the learned counsel for the first respondent, the settlement arrived at was between the petitioner and the first respondent and the Provident Fund Authority was not a party to the settlement nor a party to the earlier writ petition filed by the petitioner. Therefore, if there is any clarification required by the second respondent, it is well open to the second respondent to call upon the petitioner-management as well as the employee to appear and furnish necessary details. Therefore, on the grounds raised by the petitioner, the impugned order proceedings cannot be quashed. Accordingly, the writ petition fails and is dismissed. The petitioner is directed to appear in person before the second respondent or through their authorised representative to clarify the details sought for. Thereafter, the second respondent shall afford an opportunity to the first respondent also and take a final decision in the matter as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

3.Thereafter, without affording an opportunity, the order was passed under Section 7A of the Act. That was also put into challenge before this Court in W.P.No.17206 of 2016. A final order was passed on 30.08.2016, which reads as under:

4. In the counter affidavit filed by the first respondent, in paragraph 12, various dates of hearing have been mentioned and what would be relevant is only 11.3.2016 and 29.3.2016 as those were the dates of hearing, after direction was issued by this Court in the earlier Writ Petition. However, it appears that as on 29.3.2016, the first respondent did not offer any opportunity of hearing, as in the counter affidavit in

paragraph 12, it is admitted that it is for some other purpose that dates were mentioned. When the matter has been sent back to the first respondent to take a decision on merits, the first respondent should ensure that fair opportunity is given to both parties, especially when an organization has been established to protect the interest of the employees. At the same time, they should also see as to whether the stand taken by the management is right as they would contend that the second respondent has agreed for a full and final agreement and entered into a memorandum.

5. In the light of the above facts, this Court is of the view that the entire proceedings have to be redone after affording full and effective opportunity to the parties. Accordingly, the Writ Petition is allowed. No costs. The impugned order is set aside and the matter is remitted to the first respondent. W.M.P.No.14675 of 2016 is closed.

6. The petitioner is directed to file their counter statement / objections within a period of two weeks from the date of receipt of a copy of this order and copies of the same shall be forwarded to respondents 2 and 3. Respondents 2 and 3 are granted two weeks time to file their rejoinder. On receipt of submissions from both sides, the first respondent is directed to fix a date for personal hearing, within two weeks thereafter and on that date, the petitioner as well as respondents 2 and 3 shall appear before the first respondent and make their oral submissions. The first respondent shall pass a speaking order on merits and in accordance with law, within a period of three weeks thereafter.

4. Now, the impugned order has been passed, treating the case of the petitioner as a review and thus the power has been exercised under Section 7B of the Act.

5. Learned counsel appearing for the petitioner would submit that under those circumstances, the writ petition will have to be entertained. He submits that the order is in contravention of the direction issued by this Court.

6. The impugned order has been passed on the wrong premise in understanding the order passed by this Court in W.P.No.17206 of 2016 dated 30.08.2016. When the order passed under Section 7A of the Act is set aside and the matter stands remitted, there is no question of review being involved. However, this Court finds that the first respondent has assigned reasons for coming to its conclusion. In effect, it is only an

order under Section 7A of the Act and not Section 7B of the Act. Therefore, it is appealable under the statute.

7. Accordingly, the writ petition stands disposed of, giving liberty to the petitioner to file statutory appeal within a period of four weeks from the date of receipt of a copy of this order, treating the impugned order as one passed under Section 7A of the Act. As and when such an appeal is filed, appropriate authority will have to treat it as filed within time and decide it on merits. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

To

1. The Assistant Provident Fund Commissioner (C & R),
Employees Provident Fund Organisation,
Regional Office, 37, Royapettah High Road,
Chennai - 600 014.
2. The Branch Manager,
Bank of India,
Royapettah Branch, Chennai - 600 014.

+2 Ccs to Mr.S.P. Srinivasan, Advocate sr 23225
+1 CC to Mr.T. Saikrishnan, Advocate sr 23498
+1 CC to Mr.F.B. Benjamin George, sr 23364
+1 CC to Mr.A.P.Surya Prakasam, sr 23770

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