

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.3457 of 2017

The Management of RRB Energy Limited
No.182/2, Bye Pass Road
Poonamallee, Chennai 600 056
rep.by its Sr.Manager, Personnel & Administration .. Petitioner

-vs-

1. The Assistant Provident Fund Commissioner
Employees' Provident Fund Organisation
No.37, Royapettah High Road
Chennai 600 014
2. Government of India
rep by the Joint Secretary
Ministry of Labour and Employment
Shram Shakti Bhavan, Rafi Marg
New Delhi 110 001 ...Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the first respondent to consider the representation of the petitioner dated 2.2.2017 for the benefit of the Amnesty Scheme of the second respondent dated 30.12.2016 in proceedings in TN/MAS / 0031579/000/Enf 521/Damages dated 19.1.2017 and decide it as a preliminary issue, pass orders thereon before proceeding with the enquiry on the levy of damages.

For Petitioner :: Mr.G.Anand for
M/s T.S.Gopalan & Co.

ORDER

The Management of RRB Energy Limited represented by its Senior Manager, Personnel & Administration, Chennai has brought this writ petition seeking a writ of mandamus, directing the Assistant Provident Fund Commissioner, Employees' Provident Fund Organisation, Chennai, the first respondent herein to consider the representation dated 2.2.2017 for the benefit of the Amnesty Scheme of the Ministry of Labour and Employment, Government of India, the second respondent herein dated 30.12.2016 in

proceedings bearing No.TN/MAS/0031579/000/Enf.521/Damages dated 19.1.2017 and decide it as a preliminary issue, pass orders thereon before proceeding with the enquiry on the levy of damages.

2. The claim of the petitioner shows that the petitioner, being an establishment in the manufacture of Wind Electronic Generators, has undertaken the operation and maintenance of a few hundreds of wind mills throughout the country on contract basis for a specific period. Since the operation and maintenance work is only for a fixed period, it cannot afford to employ permanent manpower for the said job. But the petitioner used to engage casual workmen for the duration of contract and pay them the wages as admissible. After the temporary work was over, the contract of operation and maintenance of the site had also been wound up. However, since the petitioner had engaged 24 Security Guards on contract basis and paid them wages as per the contract of employment, all these Security Guards approached the Labour Court in Maharashtra, since one of the contracts for operation and maintenance was at Sautada site in the State of Maharashtra, making a claim for additional amount purporting to be the difference between the minimum wages payable and the wages actually paid. During the pendency of the case before the Labour Court, it is stated that a settlement was also reached on 13.12.2014 for paying a substantial amount to each of the 24 Security Guards for the various periods ranging between 15.2.2009 and 16.2.2015. The said amount was also paid by way of instalments between March and April, 2015 and the total contributions amounted to Rs.18,92,466/-. However, when the petitioner has made both the employees' and the employer's contributions, noticing that there was a delay in payment of the provident fund contributions, a notice was issued by the first respondent calling upon the petitioner to show cause as to why interest and damages should not be claimed from the petitioner. Immediately after the receipt of the communication from the first respondent, the petitioner, on the basis of the Scheme introduced by the second respondent dated 30.12.2016, sought for the benefit of the Scheme in respect of waiver of damages. But the first respondent, without even considering the representation dated 2.2.2017, which sought for disposal on the basis of the Scheme dated 30.12.2016 issued by the second respondent, is proceeding to pass final orders. It is at this stage the petitioner has been advised to approach this Court.

3. But this Court is not able to find merits in the writ petition. The reason is that when it is an admitted fact that the petitioner made the provident fund contributions with some delay, they cannot escape from the liability to pay both interest and damages. However, the representation given to the first respondent to consider their request for grant of the benefit covered under the Scheme dated 30.12.2016 issued by the

second respondent cannot be rejected, as it is open to the first respondent to consider and pass final orders. Therefore, this Court is not inclined to entertain the writ petition. Accordingly, the writ petition is dismissed. However, it is made clear that the first respondent may consider the case of the petitioner, if the Scheme dated 30.12.2016 introduced by the second respondent is meant for giving any benefit to the petitioner establishment. Consequently, W.M.P.No.3432 of 2017 is also dismissed.

s/d-
Assistant Registrar (CS-III)

//True Copy//

Sub-Assistant Registrar

To

1. The Assistant Provident Fund Commissioner
Employees' Provident Fund Organisation
No.37, Royapettah High Road
Chennai 600 014
2. The Joint Secretary to Government of India
Ministry of Labour and Employment
Shram Shakti Bhavan
Rafi Marg
New Delhi 110 001

+1 CC to M/s. T.S. Gopalan, Advocate, sr 9009

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KJ (CO)
sp/28/2

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