IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 3143 of 2011
& M.P.No.1 of 2011

Neyveli Lignite Corporation Employees
Co-operative Thrift and Credit Society Limited
Represented by its Special Officer,
Neyveli Township, Neyveli - 607 803 .. Petitioner

Vs.

1.The Assistant Provident Fund Commissioner,
Tiruchirapalli, No.18, Shree Complex,
Trichy - 8.

2.The Branch Manager,
State Bank of India,
Main Bazar Branch,
Neyveli - 607 803.

3.The Branch manager,
State Bank of India,
Trichy Town Branch, Trichy. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in No.SDC/TN/TRY/8170/Circle:23/SRO-TRY/2011, dated 17.01.2011 and quash the same.

For Petitioner : M/s.S.Sairaman
For RR1 : Mr.K.Gunasekar, ACGSC
For RR2 & 3 : Mr.S.Kanniah

O R D E R

The petitioner has filed this Writ Petition praying to call for the records of the 1st respondent proceedings No.SDC/TN/TRY/8170/Circle:23/SRO-TRY/2011, dated 17.01.2011 and quash the same.

2. The learned counsel for the petitioner has submitted that the petitioner-Society is intended for employees of Neyveli Lignite Corporation (hereinafter called as NLC), which comes under the purview of Tamil Nadu Co-operative Societies Act, 1983 and it is managed by Special officer of the Co-operative Department from 24.05.2001. The function of the petitioner / Co-operative Society is to lend short, medium and long term loans to its members, who work in NLC. Besides, the management regularly collecting Employees Provident Fund contribution form the employees and remitting the same to the Provident Fund Commissioner's Office, Trichy, along with the contribution of the Management promptly, through the 2nd respondent-Bank. The Provident Fund remitted by the petitioner for the month of March 2004 was not entered in the books of Provident Fund Commissioner, which came to the knowledge of petitioner, only on 28.07.2006. But, the petitioner promptly remitted the same on 08.04.2004, by SBI Challan No.962282. The first respondent requested the petitioner to furnish the confirmation letter from the 2nd and 3rd respondents. The petitioner then enquired the 2nd and 3rd respondent bank and found that the DD had not reached the Payee Bank viz., the 3rd respondent.

3. On the petitioner's request, the second respondent-bank issued a duplicate DD afresh to the 3rd respondent on 03.03.2007 and it properly reached the office of the 1st respondent. Hence, it is very clear that the petitioner has deposited the dues for the month of March 2004, as early as on 08.04.2004, but it has not reached the 1st respondent till 28.06.2006. The petitioner subscribed subsequent periods also properly and the first respondent sent annual returns and dues regular returns in this regard.

4. On 14.07.2010, the first respondent sent a summons invoked under Section 14-B of the Employment Provident Fund and Miscellaneous Provision Act, 1952, for determining damages for alleged delay by the petitioner. The petitioner appeared on all the enquiry dates viz., 16.09.2010, 25.11.2010, 26.11.2010 and 30.10.2010, but enquiry conducted only on 30.12.2010. On that day, petitioner clearly explained that the delay is only on the part of the 2nd and 3rd respondent, hence further action may be dropped. But the first respondent passed an impugned order on 17.01.2011, directing the petitioner to remit a huge sum of Rs.2,73,362/- towards damages and interest for the delay in remitting the dues for the month of March 2004. Hence, the petitioner has filed this Writ Petition with the aforesaid prayer.

5. The learned counsel appearing for the first respondent has submitted that the petitioner failed to remit the provident fund dues for the month of March 2004, within due date

i.e. on or before 15.04.2014. For the purpose of determining the amount due summons were issued under Section 14B & 7Q of the Act, to the employer on 14.07.2010, requiring him to appear before the respondent authority on 11.08.2010 and then the inquiry was adjourned to 16.09.2010, 25.10.2010, 26.11.2010 and 31.12.2010 to represent their case.

6. On 31.12.2010, the secretary of the petitioner Establishment appeared for the inquiry and submitted that they had remitted the dues for the month of March 2004 on 08.04.2014 and the delay had only occurred to the non-receipt of remittance by third Respondent from the second Respondent and the same was finally credited into the Employees' Provident Funds Account on 02.03.2007, by the third respondent.

7. However, there is a delay of credit of Provident Fund subscription in the first respondent account. Hence, the first respondent exercised powers under Sections 14B & 7Q of the Act and ordered that the amount of Penal Damages and interest for the above said period 2004-2005 totalling Rs.2,73,362/- has to be paid by the petitioner, in order to compensate the loss. Therefore, for the delayed payment of the petitioner, the respondent has issued the impugned order to pay the aforesaid amount.

8. The learned counsel appearing for the second and third respondent has submitted that the petitioner has remitted the disputed Provident Fund, i.e., Rs.2,73,362/-, on 08.04.2004, through the second respondent-Bank. On receipt of the said amount, the demand draft was issued on 08.04.2004 by the second respondent in favour of the first respondent, However, the demand draft was misplaced in transit, hence the amount could not be realized into the first respondent account by the 3rd respondent bank. However, the first respondent did not take any steps to inform the respondent-Banks about the the non receipt of the said amount. The second respondent after came to know that the disputed amount has not been credited into the first respondent account, have taken steps immediately to issue duplicate demand draft, in turn the third respondent bank credited the said amount in the first respondent account. If the respondent-Bank was informed about the non deposit of the disputed amount, in time or at the earliest, the Bank might have taken steps to rectify the mistake if any committed by them. Hence, the respondent-Bank cannot be held responsible for the claim.

9. However, the petitioner has got an effective remedy available by filing appeal before the appropriate authority, under the said Act against the impugned order. Hence, there are no merits in the above Writ Petition and hence the same is liable to be dismissed.

10. Heard, both sides.

11. In view of the above said submissions, it is clear that the first respondent has passed the impugned order under Section 14-B of the Employment Provident Fund and Miscellaneous Provision Act, 1952, directing the petitioner to pay the penal damages and interest for the above said period 2004-2005 totalling Rs.2,73,362/-, for the delayed payment of Provident Fund for the month of March 2004.

12. The contention of the petitioner is that the dues for the month of March 2004 has been remitted by the petitioner on 08.04.2004 hence, there is no delay on the part of the petitioner. The respondent Bank is the agency of the first respondent. The delay has only occurred due to non receipt of the remittance of the disputed amount of link branch to the base branch. The petitioner remitted the said dues to the second respondent-Bank and the Bank issued Challan and the same was forwarded to the first respondent on 16.04.2004. Moreover, the first respondent did not inform the respondent Bank or the petitioner immediately, about the non-receipt of the said amount. The first respondent without considering the above facts has passed the impugned notice against the petitioner, after a lapse of nearly 6 years under Section 14-B of the said Act.

13. Moreover, the first respondent has passed the impugned order, without providing an opportunity to the Bank as well as the petitioner, which is violating the principle of natural justice. Therefore, in the interest of justice, the impugned order passed by the first respondent is liable to be quashed. Therefore, I am inclined to pass the following orders:

> "the impugned order passed by the first respondent is quashed and the matter is remitted back to the first respondent to decide the matter afresh after providing opportunities to the petitioner as well as the respondent Banks and the same shall be completed within a period of twelve weeks form the date of receipt of a copy of this order."

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

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

The Assistant Provident Fund Commissioner
Tiruchirapalli, NO. 18 Shree Complex
Trichy-8

+1cc to S.Sairaman, Advocate SR. 12079

+1cc to K.Gunasekar, Advocate in SR. 11263

+1cc to S. Kanniah, Advocate in SR. 11239

W.P. No. 3143 of 2011
& M.P.No.1 of 2011

PVS(CO)
VR(1/03/2017)