BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.09.2017
CORAM :
THE HONOURABLE MR.JUSTICE T.RAJA
WP(MD)No.17275 of 2017
and
W.M.P.(MD)No.13831 of 2017

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office,
Bhavisya Nidhi Bhavan,
NGO ''B'' Colony,
Tirunelveli. ... Petitioner

vs.

1. The Employees Provident Fund Appellate Tribunal,
   New Delhi.

2. M/s.The Management,
   O.552, Kovilpatti Agricultural Producers Co-operative
   Marketing Society Ltd.,
   Sattur Road,
   Kovilpatti - 628 501. ... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the first respondent, dated 08.07.2014 in A.T.A.No.200(13)2012 and quash the same and direct the second respondent to pay a sum of Rs.6,35,363/- as per Order No.TN/TNY/7182/CD-II/T-21/Circle.21/2010, dated 11.01.2012.

For Petitioner : Mr.K.Muralisankar

ORDER

The present writ petition is directed against the impugned order dated 08.07.2014, passed by the Presiding Officer, Employees' Provident Fund Appellate Tribunal, New Delhi, on the ground that the Tribunal failed to consider that the Inspecting Authority counted the heads during their personal visit in the second respondent society.

2.Contending further, it is pleaded that when the statutory authority inspected the second respondent society and found out the non-enrollment of the employees, the same has also been overlooked. Without appreciating the records, finding fault with the petitioner, the Tribunal cannot enumerate and identify the employees, hence, the reasoning of the Tribunal that the petitioner never disclosed and identified the employees, is incorrect.

3.The learned counsel for the petitioner, while concluding his arguments, submitted that the issue on hand with respect to the impugned order is covered by the decision of the High Court of Delhi in the case of **J.K.College of Pharmacy Vs. Union of India and others** reported in **2012 (1) LLJ 746.**

4.But, this Court is unable to agree with the contentions made by the petitioner. The reason is, the second respondent society used to purchase the agricultural produce directly from the farmers and also load the essential food commodities from the godown of the Tamil Nadu Civil Supplies Corporation through their load men, who have been engaged on contract basis for unloading the same to fair price shops. However, when the Assistant Provident Fund Commissioner, Goa, issued a notice to the second respondent to produce the records/documents to determine the P.F. dues in respect of all eligible employees under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the second respondent society did not produce the records required by the Commissioner. When summons were issued to the carriage contractors Chandrashekhran and Sivasankaran Pillai, they also appeared before the Commissioner and deposed that they have attended the work of the society on contract basis for the year 2004-2005 and 2007-2008 respectively by loading the ration commodities in their lorry and unloading the same by using the employees to the various fair price shops in and around Kovilpatti. It is also deposed by them that the coolie amounts have been paid to one person for distribution to other employees. When the contractors admitted before the Commissioner that they were not aware of the number of employees deployed for the work and there was no existence of relationship of master and servant, there is no finding given with regard to master and servant relationship between the second respondent and the so-called loaders. Again, finding that for loading and unloading the agricultural produce, the second respondent society had availed the service of the loaders. All the times, the same set of loaders were not available or the second respondent cannot be expected to use the services of the same set of loaders. On this basis, the Tribunal has come to the conclusion that the same set of loaders are not working for the second respondent society on regular basis and moreover, it was also found that there was no evidence or findings by the Commissioner in this regard. In support of the order, the Tribunal has referred to the ratio laid down by the Hon'ble Apex Court in the case of **E.S.I.C. Vs. Premier Clay Products** reported in **1995 SCC [L & S] 162**, wherein it has been held that the coolies cannot even be called as casual workmen, hence, no contribution is payable to the E.S.I. Corporation and allowed appeal.

5.In view of the clear findings rendered by the Tribunal, the contentions made by the learned counsel appearing for the petitioner that the impugned order passed by the Tribunal has overlooked a vital aspect that the Inspecting Authority had counted heads when they undertook personal visit in the second respondent society, is wholly unfounded and unsustainable. Hence, this writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

1. The Employees Provident Fund Appellate Tribunal,
   New Delhi.

2. M/s.The Management,
   O.552, Kovilpatti Agricultural Producers Co-operative
   Marketing Society Ltd.,
   Sattur Road,
   Kovilpatti - 628 501.

+1cc to Mr.K.Muralisankar, Advocate Sr.No.78511

SMN2

VB/SKN/RSK/SAR1/28/05/2018/3P/4C

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