

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.04.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9047 of 2014
and
M.P.Nos.1 and 2 of 2014

Vivekananda College of Arts & Science for Women
Under the Management of
Vivekananda College of Educational Development Trust,
Keezha Thenpathy, Sirkali-609 110, Nagapattinam District,
Rep.by its Managing Trustee,
K.V.Radhakrishnan

... Petitioner

Vs.

1. The Commissioner
Regional Employees Provident
Fund Organization,
37, Royapettah High Road,
Chennai - 600 014.
2. The Asst. Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
No.18, Madurai Road, Shree Complex D Block,
Trichirapalli.
3. The Enforcement Officer,
Employees Provident Fund Organization,
Kumbakonam.
4. The Branch Manager,
State Bank of India,
P.B.No.2, 100, North Can Street,
Sirkali - 609 110.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorified Mandamus, to call for the records on the file of 2nd respondent in his proceedings No.SDC/TN/76543/Circle-34/SRO-TRY/2013 dated 15.01.2013 and quash the same and direct the 2nd respondent to hear and pass orders on merit.

For Petitioner : Mr.R.Amardeep

For Respondents 1 to 3 : Mr.V.J.Latha

For Respondent 4 : No Appearance

O R D E R

The order dated 15.01.2013 issued by the second respondent under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [hereinafter called as "the EPF&MP Act"] is under challenge in this writ petition.

2.The learned counsel for the petitioner states that the respondents have not considered certain factual aspects regarding the administration of the college. In order to settle the discrepancies in the factual aspects, the writ petitioner has chosen to file the present writ petition.

3.The learned counsel appearing on behalf of the respondents questioned the very maintainability of the writ petition on the ground that the writ petitioner had participated in the 7A enquiry and on receipt of the order issued by the Competent Authority under Section 7A enquiry, the writ petitioner was remitted the entire amount. The said payment made pursuant to the order passed under Section 7A was not disputed by the writ petitioner. Thus, the subsequent order issued under Sections 14B & 7Q of the EPF & MP Act for damages and claiming interest cannot be questioned, since it is a consequential one. This apart, an alternate remedy was available to the writ petitioner during the appropriate time and the same was not filed by the writ petitioner.

4.Thus, the writ petitioner was not entitled for any remedy before this court in this writ petition. This court is of the considered opinion that the adjudication was done before the Competent Authorities under Section 7A of the EPF & MP Act. The writ petitioner had participated in the enquiry and placed his defense before the appropriate authority concerned. Now, after the conclusion of the 7A proceedings and after settling the entire amount, the writ petitioner cannot say certain factual discrepancies arose at this point of time when the order was passed under Sections 14-B and 7-Q of the EPF & MP Act. Such factual claims cannot be entertained in the present writ petition under Article 226 of the Constitution of India. If at all any such discrepancies are noticed then the writ petitioner ought to have preferred an appeal under the EPF & MP Act, more

specifically, under Section 7-I before the Competent Authorities.

5. In the absence of any such appeal by the writ petitioner, this court is not inclined to consider the factual discrepancies now raised in this writ petition.

6. The learned counsel appearing on behalf of the respondents cited the judgment in the case of Sabita Enterprise and another Vs. Regional Provident Fund Commissioner-I and another reported in 2018 (1) LLN 614 (DB) (Cal.) and para No.5 of the judgment is extracted hereunder:

"5. Admittedly, the Appellant/Petitioner had appeared before the Authority after receiving the Notice under Section 7-A of the Act and had also filed a Review Application. Therefore, it cannot be said that the provisions of Code of Civil Procedure as provided in Section 7-A of the Act have not been complied with. We also note that the Appellant/Petitioner had a remedy to file appeal but bypassing the same, had directly approached the Writ Court and, therefore, it is redundant to remand the matter back to the Tribunal."

7. In this view of the matter, the writ petitioner now cannot question the order passed by the Competent Authorities for remedies under Section 14-B and for interest under Section 7-Q of the EPF & MP Act. In view of the fact that the writ petitioner had admitted the liability and remitted the entire amount by participating in the enquiry proceedings under Section 7-A of the EPF & MP Act.

8. Accordingly, the writ petition is devoid of merits and stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

may a

To

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State Bank of India,
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Sirkali - 609 110.

+1 cc to Mr.R.Amardeep Advocate sr 26477

+1 cc to Mrs.V.J.Latha Advocate sr 26461

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