IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1284 of 2016
& CMP No.16639 of 2016

Regional Provident Fund Commissioner II,
Regional Officer, Tambaram,
3, Rajaji Salai,
Chennai 600 045.
... Appellant/1st respondent

versus

1. Q Sources Global Consulting Pvt Ltd.,
Rep by the Director,
Mr.Abhiram Krishna, S-16, "Siddharth"
15th Main Road, Thiru Vi Ka Industrial Estate,
Guindy, Chennai 600 032.

2. The Provident Fund Appellate Tribunal,
Scope Minar, 4th Floor,
Core-2, Laxmi Nagar,
Delhi 110 092.

3. Branch Manager,
Citi Bank, 163, Anna Salai,
Chennai 600 002.

4. The Secretary,
Ministry of Law and Justice,
Government of India,
New Delhi. ... Respondents

R4 is Suo Motu impleaded as party respondent vide order of this Court dated 20.06.2018 made in WA No.1284 of 2016 by KKSJ & RSMJ

Appeal filed under clause 15 of Letter patent against the order passed by this Court dated 01.08.2016 passed in WP No.32054 of 2015.

WP.NO.32054/2015:

Writ Petition filed under Article 226 of Constitutoin of India, praying to issue a Writ of Mandamus to Call for the records of the 1st respondent culminating in its Communication bearing Reference TB/RO/TAM/PDC/53001/59/8f/2015 dated 18.8.2015 issued to the 3rd respondent and quash the same and direct the 1st respondent to refund the sum of Rs.65 41 649.00 collected coercively through the 3rd respondent to the petitioner.

For Appellant : Mr.K.Ramu

For Respondents : Mr. L.Maithili

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

This intra Court Appeal has been filed by the 1st respondent in WP No.32054 of 2015, challenging the order dated 01.08.2016 made in the above Writ petition. The Writ petition was filed by the 1st respondent herein seeking refund of a sum of Rs.65,41,649/-, which was collected by the 1st respondent through the 3rd respondent by taking coercive steps attachment of the Bank accounts of the 1st respondent.

2. The facts of this Appeal reveal a very unhealthy situation resulting from the inaction of the Authorities concerned in manning the Tribunals created under various statutes. The 1st respondent viz. the Regional Provident Fund Commissioner II passed an order on 23.07.2015 demanding a sum of Rs.76,81,588/- for damages under Section 14(b) of the Employees Provident Fund Act, apart from the above said demand it was also stated that interest payable under Section 70 of the Act, works out to Rs.39,79,466/-. Upon passing the order on 23.07.2015, the appellant also attached the Bank accounts of the 1st respondent assessee. In the meantime, the 1st respondent assessee had challenged the order dated 23.07.2015, before the Employees Provident Fund Appellate Tribunal, New Delhi, since there was a delay of 5 days in the Appeal, the Appeal was accompanied by the Application to condone the delay of 5 days.

3. During the pendency of the above said Appeal, the attachment was affected and the 1st respondent was forced to pay a sum of Rs.65,41,649/-. However, the appeal filed by the 1st

respondent was not taken up by the Tribunal at New Delhi. Therefore, the 1st respondent was denied of the opportunity to move its Appeal, seek for waiver of pre-deposit and also challenge the order of the Original Authority. Finding that the recovery has been effected even before the appeal time is over, the learned Single Judge directed the appellant to refund the entire sum of Rs.65,41,649/- which has been collected through the 3rd respondent.

4. Aggrieved the Regional Provident Fund Commissioner is on Appeal before us.

5. When this appeal came up for hearing on 17.04.2018, it was represented to us that the statutory appeal filed by the 1st respondent along with an Application for waiver is pending before the Tribunal and since the Tribunal is not functioning, application was kept pending no orders have been passed for past 2 ½ years and the matter stands posted to 03.05.2018 for hearing. Therefore, we directed the Appellate Tribunal having jurisdiction in the State of Tamil Nadu to dispose of the waiver application filed by the 1st respondent, as expeditiously as possible, within a period of two months from 17.04.2018, we directed the registry to list the Writ Appeal on 20.06.2018. To our total dismay, on 20.06.2018, it was brought to our notice that our order dated 17.04.2018 was not complied with, in view of non appointment of Presiding Officer to the Tribunal. It is also brought to our notice that even though the Central Industrial Tribunal, Chennai has been notified as Appellate Tribunal for the purposes of the Provident Fund cases. The said Central Industrial Tribunal is also vacant as of today.

6. We therefore impleaded the Secretary to Government, Ministry of Law and Justice, as a party to the Appeal suo-moto and directed the registry to issue notice to the Secretary to Government, Ministry of Law and Justice, returnable by 16.07.2018. Pursuant to the said order, the notice was sent to the Secretary to Government, Ministry of Law and Justice, Government of India, New Delhi, through the Registry and the same has been served on 12.07.2018. Despite the printing of the name of the Secretary, Ministry of Law and Justice, Government of India, New Delhi, none appears for the Secretary.

7. We have heard the learned counsel appearing for the appellant as well as the respondent.

8. The facts remains that the appellant had acted with undue haste in taking coercive steps to recover the demanded amount, even before the time for filing an appeal could expire. Even though 7(a) of the Act provides for an appeal to the Employees Provident Fund Appellate Tribunal against the order passed by the Original Authority, the said appeal remedy is also rendered ineffective by the sustained inaction on the part of the Central Government in appointing a Presiding Officer for a statutory Tribunal for over two years. Unable to man the Tribunal, the Central Government thought it fit to notify the Central Industrial Tribunal as an Appellate Authority. Unfortunately, the disability of the Central Government to man Tribunals continues and we are told that the Central Industrial Tribunal, Chennai is also lying vacant.

9. Tribunalisation was a measure adopted by the Government to reduce pendency of litigation and provide a Fast Track remedy for the litigants in special cases. By its failure to appoint Presiding Officers to such Tribunals and by keeping those Tribunals vacant the very object of tribunalisation is defeated by the Government itself. When enactments provide appellate remedy to the affected party, it is for the Government to ensure that those Appellate remedies are not rendered ineffective by not appointing Presiding Officers for Tribunals. We are alive to the fact that the Provident Fund particularly Employees Provident Fund is a provision made taking into account the welfare of the employees, but at the same time we cannot shut our eyes to the pathetic situation, the 1st respondent is now placed because of the absence of the Presiding Officers in the Appellate Tribunal. While appellant had acted with undue haste in recovering the money, the Central Government by not appointing the Presiding Officers for the Tribunals has defeated the very object of the legislation. Another alarming fact is that despite notice from this Court and despite the fact that the name of the Secretary, Union Ministry for Law and Justice has been printed in the cause list, none appears for the Union Government. We are constrained to record our displeasure at the attitude exhibited by the Union Government in responding the notices issued by this Court.

10. Coming to the facts of the present case a sum of Rs.65,41,649/- was recovered by the Appellant on 18.08.2015 itself. This very recovery appears to be against the orders of the Hon’ble Supreme Court in Writ Petition Civil Appeal No.999 of 2014. In the order made in Writ Petition Civil No.999 of 2014, the Supreme Court has observed that though the notification was issued on 07.11.2014 constituting a Southern Bench of the Tribunal for Provident Fund cases, no Presiding

Officer has been pointed till 20.03.2015. It is also made clear in the order that while directing the Solicitor General to obtain instructions on the constitution of the Tribunal, the litigants were given liberty to file the appeals at Delhi till the cases are transferred to the Tribunal at Bangalore. We are informed that since notification constituting the Southern Tribunal has been issued, the Tribunal at Delhi has refused to entertain appeals from the Southern part of the Country, no Presiding Officer has been appointed for the Tribunal at Bangalore. The Supreme Court has also recorded in the said order as follows:

> "As far as the second aspect is concerned, as it is conceded to by the learned Solicitor General that the appeals can be presented at Delhi till the Tribunal is constituted at Bangalore, we further clarify that till the Tribunal is constituted, the Appeals that ought to have been filed at Bangalore and are filed in Delhi, no coercive steps shall be taken in respect of the cases which are required to be preferred before the Southern Tribunal to be situated at Bangalore, for there is no authority who can take up the matter for grant of any interim relief."

11. The learned counsel for the 1st respondent has also produced a letter dated 01.04.2015 in LC-2(908) 2014/KR /311 issued by the Additional Central P. F. Commissioner, Head Quarters, New Delhi, addressed to all Additional Central P. F. Commissioners, drawing their attention to the orders passed by the Supreme Court in Writ Petition (Civil) No.999 of 2014, with a request to all the Regional Officers to comply with the order of the Hon'ble Supreme Court. Despite this circular, the appellant had chosen to recover the sum of Rs.65,41,649/- from the 1st respondent. This action of the appellant needless to say amounts to contempt of the Hon'ble Supreme Court. The learned counsel for the appellant would further submit that out of Rs.65,41,649/- recovered from the 1st respondent a sum of Rs.39,79,466/- is towards interest and that cannot be a subject matter of a dispute before the Tribunal also. Therefore, he would submit that the appellant is ready to refund a sum of Rs.25,62,183/-.

12. We are of the considered opinion that it would meet the ends of justice, the appellant is directed to refund a sum of Rs.25,62,183/- to the 1st respondent. We take this lenient view, even though we are not satisfied with the conduct of the appellant as well as the Union Ministry of Law and Justice, only

because the dispute relates to contribution to Employees Provident Fund, which is a welfare measure.

13. For the foregoing reasons this Appeal is partly allowed. The order or the learned Single Judge is set aside, with a direction to the appellant to refund a sum of Rs.25,62,183/- within a period of one week from the date of receipt of a copy of this Order. Needless to say that if at all the vacancies in the Tribunal are filled by the Ministry of Law and Justice, Union of India and the 1st respondent is able to succeed before the Tribunal on the demand the appellant will be liable to pay interest on this sum of Rs.25,62,183/- at the rates prescribed under the Act, for belated payment of the Provident Fund Contribution from the date of recovery till date of repayment pursuant to our directions. The Appeal is disposed of with costs which we quantify at Rs.25,000/- payable by the appellant to the 1st respondent. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. Regional Provident Fund Commissioner II,
Regional Officer, Tambaram,
3, Rajaji Salai,
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3. Branch Manager,
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Chennai 600 002.

4. The Secretary,
Ministry of Law and Justice,
Government of India,
New Delhi.

+1cc to M/s.L.Maithili Associates, sr.no.51554
+1cc to Mr.K.Ramu, Advocate sr.no.51547

ssv(co)
nr 07/09/2018