

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :09.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.43906 of 2016

and

W.M.P.Nos.37724 & 37725 of 2016

and

W.M.P.No.18482 of 2018

M/s.Sharon Solutions Ltd.,
Rep.by its Director,
Ms.Uma Maheswari,
Ground Floor, Jeena House,
No.520, M.K.N.Road,
Alandur,
Chennai - 600 016.

..Petitioner

vs

1.The Commissioner,
Employees' Provident Fund Organisation,
Sri Venni Commercial Complex,
No.101, 100 Feet Road,
Cholan Nagar, Olandai,
Keerapalayam,
Puducherry - 605 004.

2.The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Sri Venni Commercial Complex,
No.101, 100 Feet Road,
Cholan Nagar, Olandai,
Keerapalayam,
Puducherry - 605 004.

3.The Enforcement Officer,
Employees' Provident Fund Organisation,
Sri Venni Commercial Complex,
No.101, 100 Feet Road,
Cholan Nagar, Olandai,
Keerapalayam,
Puducherry - 605 004.

4.Regional PF Commissioner-II,
Employees' Provident Fund Organisation,
No.101, 100 Feet Road,
Cholan Nagar, Olandai,
Keerapalayam,
Puducherry - 605 004.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in relation to the notice dated 11/11/2016 in Ref.No.TBPDY/TBPDY0001600000/7A/TBPDY1905 and quash the same and thereby direct the respondents to conduct an enquiry based on the materials given by the petitioner and furnish a copy of the same to the petitioner.

For Petitioner : Mr.S.R.Rahunathan
For Respondents : M/s.V.J.Latha

O R D E R

The relief sought for in this writ petition is to call for the order impugned passed by the first respondent in proceedings dated 11.11.2016 under Section 8F of the Employees' Provident Fund Act and Miscellaneous Provisions Act, 1952. (hereinafter referred to as the "EPF & MP" Act)

2. A short legal question has been raised by the respective learned counsels. Thus, the other detailed facts need not be recorded for the purpose of deciding the present writ petition. The legal point raised by the learned counsel for the petitioner is that the impugned order under Section 8F of the "EPF & MP" Act had been passed without passing a final order under Section 7A of the "EPF & MP" Act. In the absence of an order under Section 75 of the "EPF & MP" Act, the writ petitioner would not be in a position to prefer an appeal under Section 75 of the "EPF & MP" Act. The said ground has been raised in paragraph 8 of the affidavit filed in support of the writ petition by the writ petitioner and the same is extracted hereunder:

"8.Since the notice impugned in this Writ Petition is not preceded by an order of determination as required under Section 7A of the Employees Provident Fund Act and the respondents have written to the customers of petitioner directing them not to make payment, the petitioner is constrained to approach this Hon'ble Court, as they do not have any other efficacious alternative remedy, owing to the highhanded, arbitrary and illegal action of the respondents."

3.The learned counsel appearing on behalf of the respondents contested the said point raised by the petitioner by stating that it is incorrect to say that no final order has been passed under Section 7A of the "EPF & MP" Act. In fact, the authorities competent had already passed an order under Section 7A of the "EPF & MP" Act in proceedings dated 29.07.2016 and the same has

been communicated to the writ petitioner and was duly served to the writ petitioner on 16.08.2016 and the authorities had received postal acknowledgment to that effect. The said fact has been categorically stated by the respondents in paragraph 17 of the counter affidavit filed by the 4th respondent and the same is extracted hereunder:

"17.I respectfully submit that the Averments made in Para 7 it is submitted that order No.TBM/PDY/PC/1600/COMP/Div-II/7A ORDER/2016-17 dated 29.07.2016 sent by the Respondent has been duly served on the petitioner on 16.08.2016 as verified from the postal acknowledgment card. The relevant copies of definitions of "basic wages" u/s 2(b), 'contribution' u/s 2(c), 'employer' u/s 2(e), 'employee' u/s 2(f) and "contributions and matters which may be provided for in schemes" under Section 6 of the Act were forwarded to the petitioner vide letter dated 05.10.2015."

4.In view of the fact that the main ground raised by the writ petitioner that no order has been passed under Section 7A of the "EPF & MP" Act and this Court, now, came to understand that the final order had already been passed under Section 7A of the "EPF & MP" Act and duly served to the writ petitioner, there is absolutely no reason to consider all these factual grounds raised by the writ petitioner on merits in this writ petition. In view of the fact that the writ petitioner has to prefer an appeal under the provisions of the "EPF & MP" Act before the competent authorities, all such merits and the demerits raised in these writ petition shall be adjudicated by the respective parties before the Appellate Authority, if any appeal has been preferred by the writ petitioner, challenging the said order passed under Section 7A of the "EPF & MP" Act.

5.This being the factum of the case, no further adjudication needs to be entertained in respect of the grounds raised in the present writ petition. However, it is left open to the writ petitioner to approach the Appellate Authority under the provisions of the "EPF & MP" Act.

6.Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Commissioner,
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+1cc to M/s.V.J.Latha, Advocate Sr.No.44336

KJ(CO)
sm:25.7.2018

W.P.No.43906 of 2016

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