

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 30599 of 2018
and
W.M.P. No. 35680 of 2018

M/s. Srinivasan Associates Pvt.Ltd.
Rep. By its Managing Director
Mr. G. Srinivasan ..Petitioner

Vs.

The Regional Provident Fund
Commissioner - II,
Employees' Provident Fund Organisation
P.B. No.3875, Dr.Balasundaram Road
Coimbatore - 641 018. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in proceedings No.TN/RO/CBE/ENF/7A PROCEEDINGS/CC-16/45310/2018 and quash its order dated 01.11.2018 and direct the respondent to reopen the enquiry in respect of proceedings No.TN/RO/CBE/ENF-C/CC-1(16)/45310/2018 permit the petitioner to cross examine S.Sathyamoorthi and S.Leela, Enforcement Officer by providing copy of the report dated 20.09.2018 to the petitioner and further allow the petitioner to lead evidence and pass such further orders.

For Petitioner : Mr. S. Ravindran, Senior Counsel
for Mr.S. Bazeer Ahamed

For Respondent : Mr.R.Thirunavukkarasu,
Standing Counsel for EPF

O R D E R

This writ petition is filed seeking to quash the proceedings No.TN/ RO/CBE/ENF/7A PROCEEDINGS/CC-16/45310/2018 dated 01.11.2018 issued by the respondent and direct the respondent to reopen the enquiry.

2. Mr.R.Thirunavukkarasu, learned Standing Counsel takes notice for the respondent. With the consent of both the parties, the main Writ Petition is taken up for final disposal, at the stage of admission itself.

3. The learned Senior Counsel appearing for the petitioner would submit that the Enforcement Officer of the respondent Organisation, conducted inspection during November 2015 and initiated proceedings in terms of Section 7A of the EPF & MP Act, for the alleged non-payment of contribution to certain employees of the petitioner company. During enquiry the petitioner has disputed the allegations made in the inspection report dated 25.01.2018, claiming contribution of Rs.1,95,91,352/- for the period April 2012 to November 2017. According to the petitioner, the aforesaid report is completely wrong. Hence, the petitioner wanted to cross examine Mr. S. Sathyamoorthi, the Enforcement Officer who prepared the report dated 25.01.2018. During the enquiry held on 10.08.2018, 24.08.2018 and 31.08.2018, the enquiry was adjourned on the ground that the Enforcement Officer could not file a report based on the records produced by the petitioner and the report produced by the Squad Officers. The petitioner gave a letter on 22.10.2018 seeking to grant permission to cross examine the Enforcement Officer during the enquiry to be held on 29.10.2018. But the said enquiry was concluded on 29.10.2018 without provide opportunity to cross examine and it was informed to the petitioner that final orders would be passed within 15 days.

4. According to the petitioner, immediately the petitioner filed W.P. No. 29578 of 2018 before this Court seeking to re-open the said enquiry and permit the petitioner to cross examine the Enforcement Officer. On the basis of the submission made by the learned Standing Counsel for the respondent that final order has been passed on 09.11.2018 and copy of the order would be despatched to the petitioner. Recording the said statement, the writ petition was dismissed, directing the petitioner to approach the appropriate forum. The impugned order was despatched and challenging the same, the petitioner is before this Court.

5. The learned Senior Counsel appearing for the petitioner would submit that the writ petition has been filed challenging mainly on the ground that despite the petitioner sought for an opportunity to examine the Enforcement Officer, the same has not been provided and the said request was not considered. Consequently, the final report submitted by one Leela, Enforcement Officer, was not furnished to the petitioner. Therefore, the respondent has violated the principles of natural justice. The ratio laid down by the Hon'ble Supreme Court and this Court, in cantena of judgements, has not been followed by

the respondent. Therefore, the petitioner has approached this Court, without exhausting the alternative remedy.

6. Mr.S. Sivashanmugam, Assistant Provident Fund Commissioner (Legal), Coimbatore is present in the Court. Counter affidavit has been filed by the respondent. On instructions, learned Standing Counsel appearing for the Respondent would submit that admittedly, the second report has not been furnished to the writ petitioner. If this Court directs, the respondent shall communicate the second report to the petitioner and pass final orders afresh.

7. In view of the aforesaid submission of the learned Standing Counsel for the respondent, the petitioner is not pressing the other allegations made in the grounds of writ petition.

8. Considering the submission of the learned Senior Counsel for the petitioner and the learned Standing Counsel, this Court is inclined to pass the following orders :-

1. The impugned proceedings No.TN/ RO/CBE/ENF/7A PROCEEDINGS/ CC-16/45310/2018 dated 01.11.2018 issued by the respondent is quashed.
2. The respondent is directed to furnish a copy of the report dated 20.09.2018 to the writ petitioner within a period of one week from the date of receipt of a copy of this order.
3. On receipt of the said report, it is open to the petitioner to file an application to cross examine the witnesses.
4. In the event of any such application being filed, it is open to the respondent to pass appropriate orders on merits and in accordance with law.
5. The writ petitioner shall cooperate with the enquiry before the respondent, without seeking any unnecessary adjournments.
6. The respondent shall conclude the enquiry, as early as possible.

9. The Writ Petition is disposed of, with the above direction. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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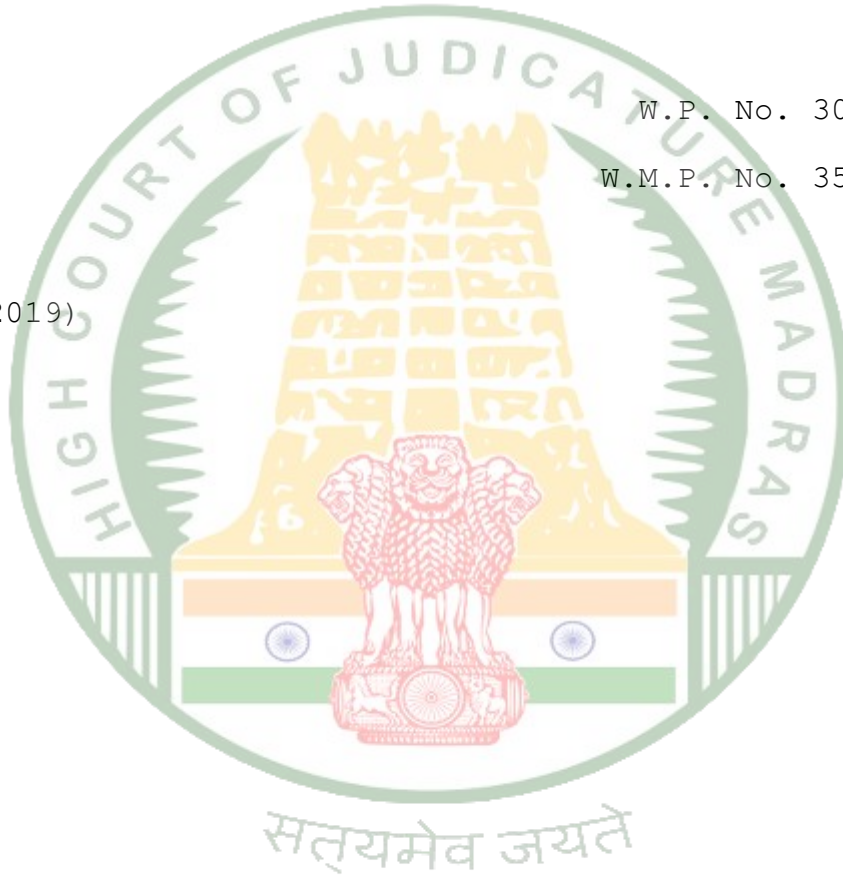
To

The Regional Provident Fund
Commissioner - II,
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P.B. No.3875, Dr.Balasundaram Road
Coimbatore - 641 018.

+1 CC to Mr.S. Bazeer Ahamed, Advocate sr 83543
+1 CC to Mr. Thirunavukarasu, Advocate sr 83933.

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RV(CO)
SP(21/01/2019)



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