

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.11983 of 2018

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking verbatim the following relief:

“... to issue a Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the 3rd respondent in issuing notice in proceedings No.AP/RO/GNT/PD/PRM/21171/14B Enquiry/2018-19/11, dated 02.04.2018, under Section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, seeking to levy damages/penalty on the alleged EPF arrears, in spite of the fact that the petitioner establishment is closed since August, 2007 and without conducting enquiry as directed by this Hon'ble Court vide order dated 22.11.2017 made in WP.No.39412 of 2017, as arbitrary, illegal, unjust, colourable exercise of power, apparent malafide intention, misuse of official position, violative of the principles of natural justice, res-judicata contrary to the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the Rules made thereunder and violative of the Fundamental Rights guaranteed under Article 14 and 19 of the Constitution of India, contrary to the directions of this Hon'ble Court in the aforesaid Writ Petition and consequently set aside the said notice dated 02.04.2018 and direct the 2nd respondent to conduct enquiry, if any, in the said matter instead of 3rd respondent and further direct the respondents to close all the accounts relating to the petitioner establishment in so far as its contribution towards EPF EPS etc. are concerned and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

I have heard the submissions of the learned counsel appearing for the petitioner and of the learned Standing Counsel appearing for the respondents 2 & 3. I have perused the material record.

Learned counsel for the petitioner would submit as follows: - 'Earlier the petitioner challenged a show cause notice, dated 28.09.2017, before this Court by filing WP.No.39412 of 2017. While disposing of the said writ petition, this Court noticed that an enquiry is pending; and, therefore, directed that no coercive steps shall be taken and no pressure shall be exerted on the petitioner for payment of PF dues which is subject matter of enquiry. After disposal of the afore-said writ petition, the officer who issued the impugned notice for conducting enquiry, on 10.04.2018, is repeatedly harassing the petitioner by issuing notices after notices. The said officer is not acting in a fair manner. Therefore, the present writ petition is filed.' Learned counsel would also submit that coercive steps are being stated to be initiated and pressure is being exerted upon the petitioner though enquiry is pending.

Learned standing counsel submitted that the impugned notice is only a notice directing the petitioner to attend the enquiry proceedings, on 10.04.2018, which was being conducted pursuant to the directions of this Court, dated 22.11.2017, in the afore-stated writ petition and that no coercive action is proposed and no pressure is being exerted as being contended by the petitioner in this writ petition.

In reply, learned counsel for the petitioner submits that there is personal inconvenience for the petitioner to attend for the enquiry, on 10.04.2018, and, therefore, requests to direct the officer concerned to fix another convenient date for the enquiry.

Having regard to the facts and submissions, the Writ Petition is disposed of directing the Assistant Provident Fund Commissioner (PD)/3rd respondent

to fix another date other than 10.04.2018 within one month from the date of receipt of a copy of this order, and intimate the said date to the petitioner, for conducting enquiry proceedings as directed in the earlier orders of this Court in the afore-stated writ petition and accordingly proceed with the enquiry in strict accordance with the procedure established by law. The petitioner is directed to co-operate for the conduct of the said enquiry by the 3rd respondent.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

09.04.2018
Vjl



M. SEETHARAMA MURTI, J