HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.34597, 34598, 34639, 40834, 40837, 40852, 40904, 41093, 45284, 45403 & 45424 OF 2016, W.P.Nos.2986, 8228, 8255, 17993, 18009, 36290 & 36362 OF 2017

COMMON ORDER:

Heard Mr.Koka Satyanarayana Rao for petitioner and Mr.T.Balaji for respondents.

Greater Hyderabad Municipal Corporation (GHMC) is the petitioner. The issue is arises under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act').

The petitioner in the instant batch of writ petitions challenges the proceedings of 1st respondent calling upon the petitioner to pay damages towards payment of P.F within time for the specific period. The learned counsel appearing for the parties have made their submissions by referring to the averments in W.P.No.34597 of 2016. The counsel stated that except with minor changes viz., dates and averments, rest of the allegations in other writ petitions are substantially same and similar. Hence, by referring to the averments in one case, the entire batch of writ petitions can be disposed of. The statement is placed on record.

For convenience, the prayer in W.P.No.34597 of 2016 is excerpted:

> "....this Hon'ble court may be pleased to issue an order direction or a writ or more particularly one in the nature of Writ of Mandamus declaring that the impugned orders of the 1st Respondent in TS/Hyd/1068154/P.D.Cell-IV/T-1/2016, dated 15.06.2016 passed under section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (the Act) as arbitrary illegal without jurisdiction and is unenforceable and pass such..."

The respondents could not produce the record or in a majority of cases filed counter affidavit. Mr.Balaji admits that record is not available to satisfy the Court that the petitioner was heard at any stage before orders impugned are passed.

The learned counsel, keeping in view the scheme of the Act, made submissions on a short point. The complaint of writ petitioner is that the respondents while passing the order impugned in the writ petition have not afforded fair and reasonable opportunity to petitioner and the order impugned in the writ petition is substantially an *ex parte* order. Through the order impugned in the writ petition, the respondents are levying damages on the petitioner. According to petitioner, it is not under obligation to pay the provident fund contribution for the periods under demand and consequently the voluntary belated payment, assuming without admitting, ought not to give fresh cause of action to respondents to levy damages. The petitioner further contends that for levying damages, the respondents are required to conform to the requirements of Section 14-B of the Act. Even to levy damages or penalty, in any form, *mens rea* on the part of petitioner is not established. In the case on hand, it is wanting.

*Per contra,* the learned standing counsel contends that against the order impugned in the writ petition the petitioner can file appeal under Section 7-I of the Act before the Tribunal. The Tribunal would have considered the facts in issue and passed appropriate orders as are deemed fit. Alternatively, it is contended that opportunity said to have been provided by the

respondents is reflected in the order impugned in the writ petition and this Court, if for any reason, is of the view that principles of natural justice are violated while passing the order impugned in the writ petition, the order impugned in the writ petition may be set aside and the matter remitted to primary authority for consideration and disposal in accordance with law.

I have perused the record and taken note of the submissions of learned counsel, particularly the limited submission of Mr.Balaji and, to meet the ends of justice or to keep the order within the four corners of law, the writ petition is ordered as follows:

(a) the impugned order is set aside and the matter is sent back to 1st respondent for hearing and disposal on merits in accordance with law;

(b) the petitioner is given four weeks' time from date of receipt of copy of this order both to file explanation and produce record before the 1st respondent; and

(c) the 1st respondent passes orders within six weeks from the date of submission of explanation or production of record by the petitioner.

In view of the above, rest of the writ petitions are also ordered on the same terms and conditions. There shall be no order as to costs.

Miscellaneous petitions, if any, pending stand closed.

*S.V.BHATT, J*

06th April, 2018

*Lrkm*