

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.170 of 2019
and
Civil Miscellaneous Petition No.1681 of 2019

M/s.Srinivasan Associates Private Limited,
Rep., by its Managing Director, G.Srinivasan,
14/2 & 4, Avinashi Road,
Opposite Tirupur Textiles, Peelamedu,
Coimbatore-641 004. .. Appellant/Petitioner

-vs-

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

Prayer: APPEAL under Clause 15 of the Letters Patent to set
aside the order dated 05.12.2018 made in W.P.No.30599 of 2018.

W.P.No.30599 of 2018:

Writ Petition filed under Article 226 of the Constitution of
India praying for issuance of a Writ of certiorarified
Mandamus , Calling for records of the respondent in proceedings
no TN/RO/CBE/ENF/7A PROCEEDINGS /CC-16/45310/2018 and quash its
order date 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 Appellant : Mr.S.Ravindran,
Senior Counsel
assisted by Mr.S.Bazeer Ahamed

For Respondent : Mr.R.Thirunavukkarasu,
Standing Counsel

JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

This appeal, filed by the appellant/writ petitioner, is directed against the order in W.P.No.30599 of 2018, dated 05.12.2018.

2.Heard Mr.S.Ravindran, learned Senior Counsel, assisted by Mr.S.Bazeer Ahamed, learned counsel for the appellant; and Mr.R.Thirunavukkarasu, learned Standing Counsel for the respondent.

3.Mr.S.Ravindran, learned Senior Counsel for the appellant submitted that though the Writ Court allowed the writ petition and quashed the order dated 01.11.2018 passed by the respondent, the request made for cross examination has not been granted, but an observation has been made that it is open to the appellant to file an application before the respondent seeking request for cross examination.

4.As could be seen from the stand taken in the counter affidavit, the respondent appears to be of the opinion that no useful purpose would be served by affording an opportunity to cross examine. In the light of the above, it has to be seen as to whether the appellant has got right to cross examine the Department witness based on whose reports, computation has been made towards payment of provident fund dues.

5.The Court having allowed the writ petition and quashed the order dated 01.11.2018 on the ground that the appellant did not have adequate opportunity, it goes without saying that before any computation is made, the reports submitted by the Inspecting Officers which appear to be the basis of the computation, are required to be offered for cross examination.

6.The learned Senior Counsel for the appellant has produced copies of order passed by the other Regional Provident Fund Commissioners, who have permitted cross examination. Since the issue pertains to computation of the contribution payable to the appellant-Management on the work force employed by them, if in the opinion of the Department there are more number of workers, the basis of such stand shall be disclosed by the appellant-Management and the officer, who inspected the establishment and has drawn the reports, has to be made available for cross examination.

7.Mr.R.Thirunavukkarasu, learned Standing Counsel for the respondent submitted that the Writ Court has made an observation that it is open to the appellant to file an application seeking request for cross examination, before the respondent.

Therefore, there is no error in the order passed in the writ petition.

8.Further, we do not agree with the said stand because, in the counter affidavit, the respondent has taken a stand that there is no useful purpose would be served by providing an opportunity to cross examine the Department witness. Considering the fact that principles of natural justice have to be strictly adhered to, this Court is of the view that there should be a positive direction to the respondent to permit the appellant to cross examine the Department witness, who had conducted the inspection and drawn the reports dated 20.09.2018 and 25.01.2018.

9.For the above reasons, this writ appeal is allowed and the direction insofar as it relates to paragraph 8.3 of the impugned order in the writ petition is set aside, a positive direction is issued to the respondent to permit the appellant to cross examine the Department witness who had drawn the reports dated 20.09.2018 and 25.01.2018. The respondent shall issue notice to the appellant fixing the date for cross examination with a period of two week's from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

abr
To

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

+1 CC to Mr.R.Thirunavukkarasu, Advocate sr 74014.
+1 CC to Mr.S.Bazeer Ahamed, Advocate sr 24009.

W.A.No.170 of 2019

SSV(CO)
SP(25/04/2019)