

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.1608 of 2013

The Recovery Officer,
Office of the Regional PF Commissioner,
Bhavishyanidhi Bhavan,
Employees' Provident Fund Organisation,
Regional Office,
Dr.Balasundaram Road, Coimbatore-641018.

...Petitioner

vs.

1. The Presiding Officer,
EPF Appellate Tribunal,
New Delhi.

2. Mr.R.Raveendran,
(Director of M/s.Raveendra Mills Ltd),
S/o.Ramachandran,
No.654 E, Trichy Road,
Singanallur, Coimbatore-641005.

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the proceedings of 1st respondent dated 09.01.2013 in ATA.No.717(13)2012 and quash the order.

For Petitioner : Mr.C.Kulanthivel

For Respondents : R1-Tribunal
Mr.S.Gunalan for R2.

ORDER

The writ petitioner is the Recovery Officer, Employees' Provident Fund Organization.

2. This writ petition is filed challenging the proceedings of the first respondent dated 09.01.2013, granting an interim stay of the show cause notice against the second respondent in proceedings dated 08.01.2010.

3. The learned counsel for the writ petitioner states that a show cause notice was issued against the second

respondent in proceedings dated 08.01.2010, directing the second respondent to appear before the Assistant P.F.Commissioner on 19 January 2010 at 11.00 A.M. and to show cause as to why he should not be committed to the civil prison in execution of the certificate. The second respondent approached the first respondent by filing ATA.No.371(13)2002 under Section 7(A) of EPF Act and the Employees Provident Fund Appellate Tribunal granted an interim order.

4. The learned counsel for the writ petitioner states that the second respondent earlier filed W.P.No.1475 of 2010, challenging the show cause notice dated 08.01.2010 and the said writ petition was dismissed by this Court on 26.04.2011, by passing a detailed order. The said order became final, as the second respondent did not file any appeal against the said order. Therefore, the order passed by the first respondent is in violation of the decision taken by the High Court in W.P.No.1475 of 2010. This apart, it is contended that no appeal is maintainable under Section 7(I) of the Act, since the show cause notice is not a final order. The writ petitioner states that on account of all these reasons, the department was unable to proceed against the second respondent in respect of the action initiated.

5. The learned counsel appearing on behalf of the second respondent states that the show cause notice was challenged by the second respondent in W.P.No.1475 of 2010 and the said writ petition was dismissed. However, the appeal contemplated under the provisions of the Act cannot be denied to the second respondent. Thus, there is no infirmity in respect of the appeal filed by the second respondent under Section 7(I) of the Act.

6. Considering the contention, this Court is of the opinion that the show cause notice dated 08.01.2010 was challenged by the second respondent in W.P.No.1475 of 2010 and this Court dismissed the writ petition on 26.04.2011. After the dismissal of the writ petition, no appeal can be entertained by the Appellate Tribunal, as the right of the second respondent with reference to the show cause notice was decided by the High Court in a writ petition. In fact, no liberty was granted by the High Court for preferring any such appeal under Section 7(I) of the Act. Maintainability of the appeal under Section 7(I) of the Act deserves no consideration in this writ petition, as the second respondent himself filed a writ petition challenging the show cause notice and the said writ petition was also dismissed. Under these circumstances, the order passed by the first respondent under Section 7(I) of the Act cannot be maintained at all. The Tribunal ought not to have entertained the appeal, in view of the fact that the High Court has already decided the validity of the show cause notice dated 08.01.2010 in W.P.No.1475 of 2010.

7. This being the facts and circumstances of the case, the writ petitioner is empowered to initiate all further actions, pursuant to the show cause notice dated 08.01.2010, against the second respondent.

8. This being the factum, the order dated 09.01.2013 passed in A.T.A.No.371(13)2002 by the first respondent is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

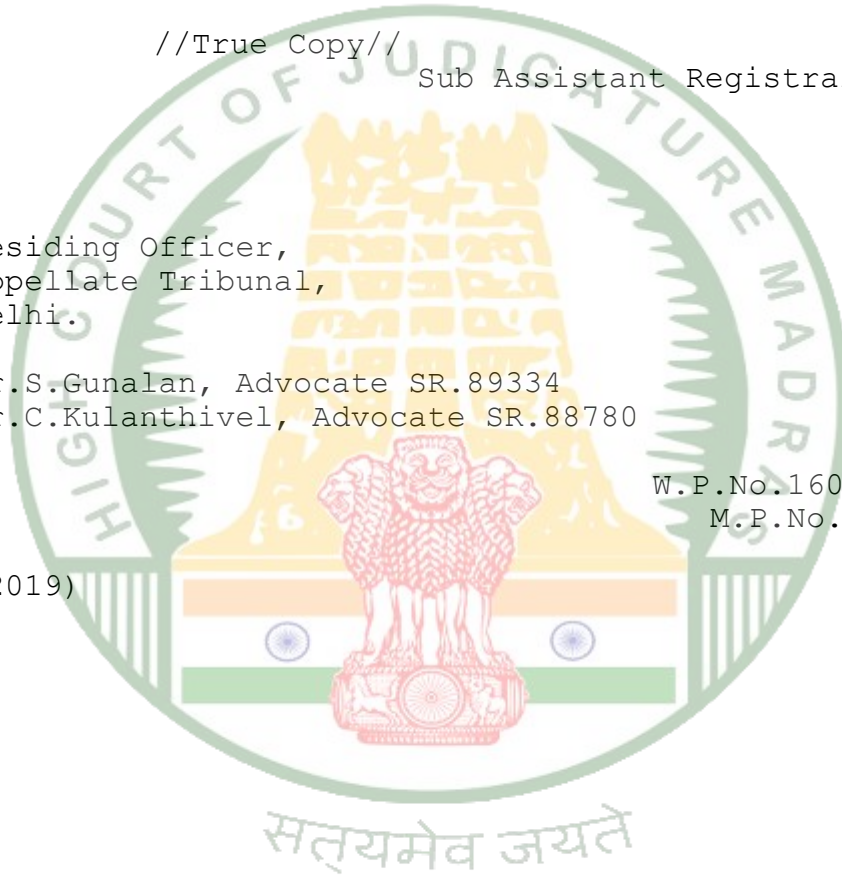
ssb
To

1. The Presiding Officer,
EPF Appellate Tribunal,
New Delhi.

+1cc to Mr.S.Gunalan, Advocate SR.89334
+1cc to Mr.C.Kulanthivel, Advocate SR.88780

W.P.No.1608 of 2013
M.P.No.1 of 2013

BR(CO)
CB(06/12/2019)



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