

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.2238 of 2019
and
WMP.No.2494 of 2019

M/s. Young Brand Apparel Pvt. Ltd.,
Rep. By its Chief Finance Officer
T.V. Guru Krishnan
Petitioner

...

Vs

The Regional Provident Fund
Commissioner - I,
Employees Provident Fund
Organisation, Sub Regional Office
S-1, TNHB, Phase-3,
Sathuvachari,
Vellore-632 009.
Respondent

...

Prayer: This Writ Petition is filed under the Article 226 of Constitution of India to issue a Writ of Certiorari, calling for records of the Central Government Industrial Tribunal Cum Labour Court, Chennai, Tamil Nadu in EPFA. No.401 of 2018 and quash its order dated 04.01.2019.

For Petitioner : Mr. S. Ravindran, Sr. Counsel
for M/s. S. Bazeer Ahamed

For Respondent : Mrs.V.J. Latha

O R D E R

The prayer in this Writ Petition is to quash the order dated 04.01.2019 of the Presiding Officer, the Central Government Industrial Tribunal Cum Labour Court, Chennai, Tamil Nadu in EPFA.No.401 of 2018, in and by which, the Tribunal had directed the Petitioner to pre-deposit 40% of the claim amount.

2. The learned counsel for the petitioner would submit that the petitioner pays service charge to the transporters based on the kilometers run by each vehicle. The transporter

maintains the vehicle and pays salary to the drivers. The above arrangement is one of principal to principal and not that of principle employer and Contractor. The respondent issued proceedings against the petitioner claiming contribution in respect of salary paid to the drivers of the service providers. The petitioner has denied the said demand by placing relevant documents and submissions. By order dated 07.04.2017, the respondent has directed the petitioner to pay a sum of Rs.10,73,358/- as contribution for the period April 2011 to September 2012. Challenging the aforesaid order, the petitioner has approached the Central Government Industrial Tribunal cum Labour Court, Chennai by filing an appeal under Section 7-I of EPF & MP Act and the same was numbered as EPFA 401 of 2018. As per proviso to Section 7-O of the Act the Tribunal has got powers to waive or reduce the deposit of 75% of the amount determined by the Lower Authority, by passing an order, recording valid reasons. Without assigning any reasons, as stated in the aforesaid provisions of the Act, by order dated 04.01.2019, the Presiding Officer has directed the petitioner to deposit 40% of the amount determined by the respondent on or before 04.02.2019. Hence, the impugned order is liable to be set aside.

3. Heard the learned counsel on either side and also perused the materials placed on record.

4. On similar facts, this Court has passed the following order dated 29.01.2019 and allowed the W.P. No.2447 of 2019:-

" 6. As per the proviso to Section 7(O) of the Act, the Tribunal has to record reasons in writing to waive or reduce the amount to be deposited. In the case on hand, on perusal of the impugned order, this Court finds that there is no reason assigned by the Tribunal in the impugned order for directing pre-deposit of 40% of the claim, which is also not disputed by the learned counsel on either side. Contrary to the said proviso to Section 7(O), the Tribunal, without recording any reason, has reduced the pre-deposit amount from 75% to 40%. Consequently, the impugned order is liable to be set aside and the matter ought to be remitted back to the Respondent to pass appropriate orders, afresh, in accordance with law.

7. Accordingly, the impugned order is set aside and the matter is remitted back to the Respondent to consider afresh and pass appropriate orders, on merits and in accordance with law, without being influenced by any of the observations made in this order, within a period of two weeks

from the date of receipt of a copy of this order.
Till such time, the Respondent shall not take any
coercive steps."

5. In the light of the aforesaid decision, this Court
is inclined to pass the following order :-

- a) The impugned order dated 04.01.2019 passed by the Presiding Officer, the Central Government Industrial Tribunal Cum Labour Court, Chennai, Tamil Nadu in EPFA.No.401 of 2018 is quashed and remitted to the Tribunal to consider afresh and pass a reasoned orders, by providing opportunity to the parties;
- b) It is made clear that the Tribunal shall pass orders on merits, uninfluenced by any observation made in this order;
- c) It is open to the petitioners to raise all the grounds before the Tribunal ; and
- d) The Tribunal shall pass orders within a period of three weeks from the date of receipt of a copy of this order .

6. The Writ Petition is allowed, with the above direction. No costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

avr

To

The Regional Provident Fund Commissioner,
EPF Organisation
Sub Regional Office
S-1, TNHB, Phase-3,
Sathuvachari, Vellore-632 009.

+1 CC to Mr.S. Bazeer Ahamed, Advocate sr 8339.

+1 CC to M/s. V.J. Latha, Advocate sr 8126.

WP.No.2238 of 2019
and

WMP.No.2494 of 2019

AD(CO)
SP(21/02/2019)