

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 11.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.33205 of 2004
and
W.M.P.No.40152 of 2004

M.Abdul Gaffoor

...Petitioner

Vs

1. Regional Provident Fund
Commissioner,
31, Filter Bed Road,
Vellore - 632001.

2. Recovery Officer,
Sub Regional Office,
Employees' Provident Fund
Organisation,
31, Filter Bed Road,
Vellore - 632001.

3. Enforcement Officer,
Vellore Division,
Employees' Provident Fund
Organisation,
31, Filter Bed Road,
Vellore - 632001.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus forbearing the respondents from preventing the petitioner from using the premises at 25, Mandy Street, Ranipet, for all the lawful purposes and in any manner known to law and from taking steps for the recovery of sum of Rs.1,64,079/-.

For Petitioner : Mr.V.S.Jagadeesan

For Respondents : Mrs.V.J.Latha

O R D E R

The prayer in the present writ petition is seeking for a writ of Mandamus forbearing the respondents from preventing the petitioner from using his premises at No.25, Mandy Street,

Ranipet and from taking steps for recovery for a sum of Rs.1,64,079/-

2. The learned counsel for the petitioner submitted that the establishment, namely M/S.J.Beedi Factory which was engaged in manufacturing Beedis, was run by their forefathers and was closed in the year 1993 itself. All the employees were paid the provident funds in the year 1995 itself and as such, the question of contribution of provident funds will not arise. Since the factory itself was closed in the year 1993, the respondents herein are not entitled to recover the alleged provident fund dues for the period from June 1977 to December 1985.

3. The learned Standing Counsel for the respondents, on the other hand submitted that the establishment namely M/s.J.Beedi Factory, Ranipet is covered under the provisions of EPF Act. After an enquiry under Section 7A of the act was conducted, a sum of Rs.1,92,353.70/- was determined as the dues payable by the establishment towards provident funds for the period from June 1977 to December 1985 and an order was accordingly passed on 30.12.1988. Since the employer failed to remit the assessed dues, a Recovery Certificate was issued in the year 1989 under Section 8B of the Act. Thereafter, the petitioner had paid a part amount alone of the provident fund dues and therefore, there is no infirmity in the recovery of the balance amount ordered by the respondents.

4. I have given careful consideration to the submissions made by the respective counsels.

5. It is seen that earlier the establishment of the petitioner had filed a writ petition in W.P.No.5394 of 1978, challenging the applicability of the Act on the ground that the workers in the establishment were not their employees, but were engaged by contractors. The writ petition came to be dismissed on 26.06.1980, with a direction to the petitioner to file an application before the Central Government under Section 19A of the Act. Pursuant to that, an enquiry under Section 7A was initiated and the provident fund dues was determined at Rs.1,93,353.70/-, through an order dated 30.12.1988. When the petitioner was directed to remit the dues within 15 days from the date of receipt of the order, the employer had defaulted, owing to which a recovery certificate dated 19.01.1989 was issued under Section 8B of the Act, authorising the Recovery Officer to recover the dues. At this juncture, the employer had requested permission to remit the arrears by monthly installments and the respondents had also permitted him to pay the arrears in 40 monthly installments, subject to the condition of furnishing bank guarantee, etc. Pursuant to the arrangement,

the petitioner had paid 11 monthly installments and thereafter had defaulted.

6. When the Department had insisted for payment of the outstanding dues, a writ petition in W.P.No.7550 of 2003 came to be filed before this Court against the order of arrest and detention made by the respondents. In the mean time, a warrant of attachment of the petitioner's properties was issued on 22.07.2003. The writ petition came to be dismissed on 07.07.2010, granting liberty to the petitioner to approach the authority under the Act and suspending the attachment of warrant for 2 months. After this, it is seen that neither the petitioner had paid the dues nor had the department proceeded with the warrant of attachment.

7. In the present writ petition, the petitioner seeks for a direction forbearing the respondents from preventing the petitioner from using the premises and from taking steps for recovery of the provident fund dues.

8. On a prima facie view, such a prayer cannot be maintained before this Court. When the order came to be passed under Section 7A of the Act, the petitioner had not challenged the same. Subsequently, when the petitioner had chosen to challenge the attachment, the writ petition came to be dismissed, with a liberty to the petitioner to approach the respondents within a period of 2 months. Even this has not been exercised by the petitioner.

9. In view of the orders pronounced by this Court in W.P.No.7550 of 2003, the present prayer to forbear the respondents from attaching the petitioner's properties or from taking steps for recovery of the amount, cannot be maintained, since the petitioner has not availed of the liberty granted to him earlier by this Court. In view of the same, I do not find any merits in the present writ petition. As such, the respondents are at liberty to recover the provident fund dues from the petitioner, in accordance with the provisions of the Act.

10. With the above observations, the writ petition stands closed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (C.S)

//True Copy//

Sub Assistant Registrar

hvk

To

1. Regional Provident Fund
Commissioner,
31, Filter Bed Road,
Vellore - 632001.

2. Recovery Officer,
Sub Regional Office,
Employees' Provident Fund
Organisation,
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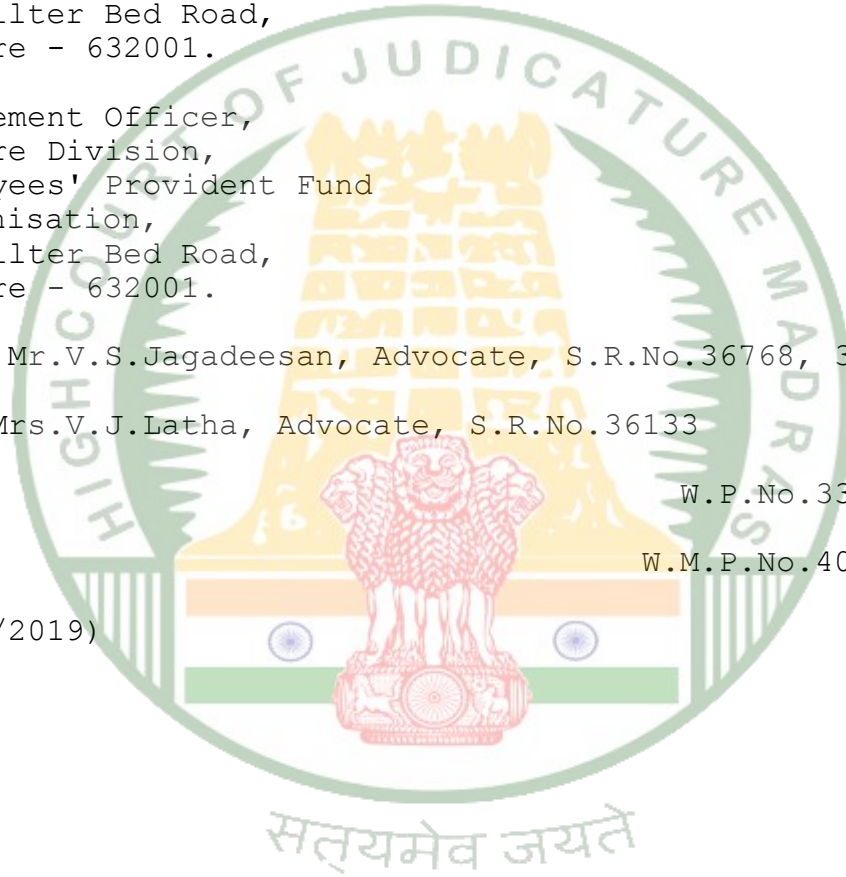
3. Enforcement Officer,
Vellore Division,
Employees' Provident Fund
Organisation,
31, Filter Bed Road,
Vellore - 632001.

+2 ccs to Mr.V.S.Jagadeesan, Advocate, S.R.No.36768, 36150

+1 cc to Mrs.V.J.Latha, Advocate, S.R.No.36133

W.P.No.33205 of 2004
and
W.M.P.No.40152 of 2004

KK(CO)
SSM(04/06/2019)



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