

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.02.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.3375 of 2019
and
W.M.P.No.3655 of 2019

M/s.Topline Associates,
rep.by its Partner-T.Rizwan
No.10/41, M.V.Bardan Street,
Anaikat Complex, Periamet,
Chennai-600 003

... Petitioner

Vs

The Assistant Provident Fund Commissioner,
EPF Organisation,
Regional Office,
37, Royapettah High Court,
Chennai-600 014

... Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the Central Government Industrial Tribunal cum Labour Court, Chennai, Tamil Nadu in EPFA No.658 of 2018 and quash its order dated 7.1.2019.

For Petitioner .. Mr.Ravindran,Sr.counsel
for Mr.S.Bazeer Ahamed

ORDER

The writ petition is filed by the Management against the order dated 07.01.2019, passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai, directing the petitioner to pay 40% of the amount assessed by the respondent in his proceedings dated 31.07.2018, within a period of one month i.e. on or before 6.2.2019, as a pre-condition to entertain the appeal filed against the said proceedings of the respondent, failing which, it is directed that the appeal will stand dismissed.

2.Mr.Ravindran, the learned Senior Counsel appearing for the petitioner would submit that the order passed by the Tribunal is bereft of reasons and therefore, the same is contrary to the express provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. He would draw the attention of this Court to Section 7-0 of the Act and proviso to the said Section, which read as under:-

"7-0. Deposit of amount due, on filing appeal-No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent of the amount due from him as determined by an officer referred to in section 7-A:

Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this Section."

3.According to the learned Senior counsel, the Tribunal has to record reasons in writing in case of waiver or reduction of amount to be deposited, under the said Section. In the instant case, the order passed by the Tribunal does not disclose any reasons at all and therefore, the order is required to be interfered with.

4.The learned Senior counsel would further draw the attention of this Court to Rule 7(3) and the proviso thereunder of the Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997, in which, the same provision is provided in regard to the recording of reasons for waiver or reduction of amount to be deposited as provided under Section 7-0 of the Act. Since admittedly no reasons have been recorded by the Tribunal, the order impugned in the present writ petition is per se illegal and therefore liable to be struck down.

5.This Court is in agreement with the submissions made on behalf of the petitioner, by the learned Senior counsel. The impugned order prima facie appears to be a non speaking order and the same is therefore contrary to the explicit provisions of the Act and the Rules as aforementioned. In view of the order being in violation of the specific provisions of the Act, particularly Section 7-0, this Court, at the admission stage itself, is constrained to allow the writ petition.

6.The order impugned passed in EPFA No.658 of 2018, dated 07.01.2019 of the Central Government Industrial Tribunal-cum-Labour Court, Chennai, is hereby set aside. The matter is remitted back to the Central Government Industrial Tribunal, Labour Court, Chennai for fresh consideration in regard to the waiver application filed by the petitioner herein. The Tribunal is directed to pass a speaking order, on the basis of the

materials and the pleadings placed on record on behalf of the petitioner. The Tribunal is also directed to pass appropriate orders and in case finds that the petitioner herein has genuine case for waiver, the same shall be considered. In any case, the Tribunal shall not pass any order more or as adverse to the order already passed, which is impugned in the writ petition.

The writ petition shall stand allowed at the admission stage itself. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Assistant Provident Fund Commissioner,
EPF Organisation,
Regional Office,
37, Royapettah High Court,
Chennai-600 014

2.The Central Government Industrial Tribunal
cum Labour Court, Chennai,

+1 cc to Mr.S.Bazeer Ahamed, Advocate Sr.No.9976

CSL/15.02.2019

W.P.No.3375 of 2019

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