

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 3186 OF 2011

AND

M.P. NO. 1 OF 2011

M/s. Omega Cables Ltd.
Rep. By General Manager (Finance)
S.Sundarraman, S/o N.Subramanian
No.16-17, Industrial Estate
Ambattur, Chennai 58. .. Petitioner

- Vs -

1. The Recovery Officer
O/o The Recovery Officer Employees
Provident Fund Organisation Sub-Regional
Office -R40A 1, T.N.H.B. Shopping Complex
Mogappair (East), Chennai - 37.
2. The Assistant Commissioner Of
Provident Fund Employees Provident Fund
Organisation Sub Accounts Office-
R40 A1 T.N.H.B. Shopping Complex
Mogappair (East), Chennai - 37.
3. The Presiding Officer
The Employees Provident Fund Appellate
Tribunal, New Delhi. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records in order passed in ATA.No. 645(13) 2003 dated 31.03.2010 on the file of the 3rd respondent and the consequential orders passed by the 1st respondent dated 24.12.2010 in No. TN/SRO/AMB/ 5088/Recovery/2010 and quash the same as illegal arbitrary and unjustifiable.

For Petitioners : Mr. A.Thiagarajan, SC, for
Mr.S.Ramesh Kumar

For Respondents : Mr. J.Sathyanaraya Prasad
for RR-1 & 2

ORDER

The writ petition is filed against the original order passed by the 2nd respondent quantifying the contribution payable by the petitioner/company, vide its proceedings dated 26.2.03.

2. According to the original order passed by the 2nd respondent, the petitioner had not paid contribution towards provident fund and insurance fund due for the period from May, 2002 to January, 2003 in accordance with the provisions of the employees Provident Fund Scheme, 1952, Employees Pension Scheme, 1995 and Employees State Insurance Scheme, 1996. The 2nd respondent/authority has quantified the amount payable at Rs.15,17,670/=. The 2nd respondent has found that the Management, despite opportunities given, has not chosen to appear and make their submissions or objections.

3. As against the said order, the Management has filed an appeal before the 3rd respondent/Appellate Tribunal. Even before the Appellate Tribunal, the Management has not placed any materials objecting the quantum as quantified by the assessing authority/2nd respondent. The Appellate Order of the Tribunal does not reflect any serious objection raised on behalf of the Management.

4. However, when the matter is taken up for hearing, Mr.Thiagarajan, learned senior counsel appearing for the petitioner/Management submits that at the relevant date, the company was not in existence and it was wound up and also the company entered into a settlement with the workers and paid the compensation as admissible to them. When such was the position, respondents 2 and 3 have not taken into consideration the aspect of closure of the company, but had chosen to pass orders, which are impugned in the present writ petition.

5. This Court is unable to appreciate the arguments advanced on behalf of the petitioner/Management, since the said arguments were not canvassed either before the 2nd respondent/Assessing Authority or before the 3rd respondent/Appellate Tribunal.

6. According to the learned counsel appearing for the respondents, no material has been placed either before the 2nd respondent or before the 3rd respondent bringing to light the closure of the petitioner/company or the settlement made with the workers of the company. In the absence of any materials being made available or produced on behalf of the petitioner, the 2nd respondent has rightly quantified the contribution payable by the petitioner/company for the relevant period. Since no worthwhile points were raised in the appeal, the

Appellate Tribunal has confirmed the order. In fact, the Appellate Tribunal has passed a detailed order as seen from paras 6 and 7 of the order, which is quoted hereunder :-

"6. The applicability of the Act is not disputed. The only question to be seen whether the money paid under the settlement amount to wages or not. Section 2B of the P.F. Act defines basic wages. The basic feature of the definition is that the money must be earned while on duty. In this case, it is not disputed the money was paid for the duty done by the workers and same was paid under the settlement. In the case of Panisugar Chemical Ltd. Vs. Kaveri Sugar and Chemical Ltd., reported in 2001 Vol.II LLJ at Page 201, the Hon'ble High Court of Madras held that "whatever agreed to paid and actually received in terms of settlement is the basic wages" in the case of Prantiya Vidyut Mandal Mazdoor Federation Vs. Rajasthan State Electricity Board reported in Vol.II SEC at page 723 therein the Lordship held that "original emoluments earned by the employees were the basic wages under the fund Act the substitute allotments as a result of the award are also be regarded as wages when a award gives revised pay-scale, the employees become entitled to the revised emoluments and were the revision with retrospective effect. The arrear paid to employee as a constituency or the emoluments earned by them while on duty. In the case the settlement was entered into the workers while they are on duty and payment was paid. So the amount paid under settlement amounts to wages.

7. It is true the order passed is ex-parte order. The order reveals that inspite of notices and adjournments the appellant has not appeared and participated in the inquiry. So the order was passed as per the available material on records and no infirmity is noticed in the order of the authority."

7. In view of the above submissions and the factual position on record, this Court is of the view that it is not open to the petitioner/company to plead their case afresh before this Court by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner having failed to produce relevant materials and having failed to make proper objections either before the 2nd respondent or before the 3rd respondent, cannot be allowed to

make such objections before this Court and invite this Court to render a finding on certain disputed questions of fact. Such adjudication is not permissible in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

8. For the reason aforesaid, this Court does not find any merit in the writ petition and, accordingly, the same is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

GLN

To

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The Employees Provident Fund Appellate
Tribunal, New Delhi.

+1 cc to M/s.V.Sathyannaraya Prasad, Advocate Sr.No.20831

+1 cc to M/s.S.Ramesh Kumar, Advocate Sr.No.21111

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PPA(CO)
CSL/05.04.2019

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