

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.2737 of 2013

and

MP.No.1 of 2013

Deputy Registrar/Official Liquidator,
Tamilnadu Cooperative
Oilseeds Growers Federation Ltd,
55, Thiru-Vi-Ka Industrial Estate,
Ekkattuthangal,
Chennai- 600 097.

...Petitioner

vs.

1. The Assistant Provident Fund
Commissioner (compliance)
Employees Provident Fund
Organisation,
Regional Office, Tambaram,
3 Rajaji Salai, Chennai- 600 045.

2. Commissioner of Civil Supplies,
Ezhilagam, Chepauk,
Chennai- 600 005.

3. M. Ranjan, Assistant (Retd., TANCOF,
No.68, G.N. Chetty Streets, Mylapore,
Chennai -4.

4. R. Lakshmipathy, Assistant (Retd)
No.29, V.M. Nagar,
J.J. Road, Tiruvallur.

... Respondents

R3, R4 Suo moto impleaded vide
order dated 26/8/2019

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a writ of Certiorari or
any other appropriate writ, order or direction in the nature of
writ calling for the records of the first respondent relating to
his order No. TB/TAM/RO/17312/ENF/T-2/2012 dated 31.12.2012
confirming his earlier order No.TB/TAM/RO/ENF/T-2/17312/2012
dated 20.11.2012 dated 13.12.2012 and quash all the said orders.

For Petitioner : Mr. A. Suriya
for Mr.P.Anbarasan

For Respondents : Mr. R. Vishnu
for Mr. R. Ramu for R1
Mr. J. Ramesh, AGP for R2

O R D E R

The order dated 31.12.2012 confirming the earlier order dated 20.11.2012 passed under Section 7A of the EPF Act is under challenge in the present Writ Petition.

2. The petitioner is an official liquidator of Tamil Nadu Co-operative Oilseeds Growers Federation Ltd. The petitioner states that the federation suffered severe set back in its affairs and suffered huge loss of Rs.3.53 crores. Thus he was ordered to be liquidated under Section 139 of the Tamil nadu Co-operative Societies Act, 1983 on 22.12.2004 and the official liquidator took charge of the assets and liabilities on 23.12.2004. On assumption of charge by the liquidator, the assets and liabilities of TANCOF vested on the Liquidator for realization and payment. With the assumption of charge by the Liquidator the establishment as such came to be closed.

3. The petitioner states that under Section 141 of the Tamil Nadu Co-operative Societies Act, 1983 mandates that when a Liquidator has been appointed, no suit or other legal proceedings shall lie or be proceeded with, against the Liquidator as such or against the society on any matter touching the affairs of society except by leave of Registrar. When the affairs of TANCOF came to be wound up, the staff were either retrenched or absorbed in Government Department. The services of 33 employees have been deployed in the State Civil Supplies Department in the year 1999 itself. This Government department has been fully meeting the salary of the employees from that year onwards. In G.O.(Ms.)No.239 Agriculture Department dated 14.10.2010, the State Government issued orders permanently absorbing 27 employees in Government service with effect from the date of their joining i.e. in May to November 1991. The remaining 6 employees are still working in that Government Department. But the Government has stated in the said Government order that the permanent absorption of them in the Government service is being examined separately. All the 33 staff have ceased to be the employees of TANCOF with effect from the dates of joining in the State Civil Supplies Department. Immediately on their joining in the Government service, the service conditions applicable to the Government servants, would automatically apply to them. However, up to May 2005, the

State Civil Supplies Department sent the employee's and employer's contributions to the petitioner and it was remitted in the Provident Fund accounts of the respective employees. The TANCOF requested the second respondent to remit the contributions directly to the Provident Fund organization. With the absorption of the staff in the Government Department, TANCOF stopped remittance of contributions to the Provident Fund of these 33 employees. The first respondent in his letter dated 11.01.2008 requested the second respondent to pay Provident Fund Contributions and also to file the return in Form 12A for the particulars of salary and Provident Fund dues of these staff for the Period from June 2005. The petitioner also addressed the second respondent in letter dated 09.06.2009 to arrange to remit the Provident Fund dues to the first respondent. The second respondent in turn addressed the Government in the Finance Department on 28.07.2009.

4. The petitioner states that without considering all these factual aspects as well as the bar on legal proceedings under the statute, the first respondent proceeded with the enquiry and issued the impugned order dated 20.11.2012 under Section 7 of the EPF Act and the consequential order of attachment dated 13.12.2012, the petitioner is constrained to move the present Writ Petition.

5. The learned counsel appearing on behalf of the first respondent states that the second respondent has already collected the contributions from the writ petitioner society and therefore the contributions already collected is bound to be remitted in the accounts of the first respondent EPF organization. The said fact is also admitted in the impugned order. This is being the factum, the second respondent has to pay the contributions as the employees of the writ petitioner TANCOF were absorbed by the second respondent/Government Department.

6. This Court is of the considered opinion that Section 141 of the Tamil nadu Co-operative Societies Act 1983 stipulates bar of legal proceedings. The statute in issue enumerates that no Civil Court shall take cognizance of any matter connected with the winding up or cancellation of the Registration of a registered society and when a liquidator has been appointed, no suit or other legal proceeding shall lie or be proceeded with against the liquidator as such or against the society or any member thereof on any matter touching the affaris of the registered society, except by leave of the Registrar or other legal proceedings shall lie on subject to such terms as he may impose. Thus there is a statutory bar on the part of the first respondent for continuing the legal proceedings against the liquidator appointed under the provisions of the Tamil Nadu Co-

operative Societies Act. Admittedly the employees of the TANCOP were absorbed in the Civil Supplies Department and they became Government employees. Thus, the contributions already collected from the petitioner is to be disbursed and if any dispute is there, the same is to be resolved by following the procedure contemplated. Contrarily, the first respondent now cannot claim against the said procedure in the writ petition wherein the Registrar appointed the liquidator and liquidator had assumed charges even before passing the impugned order. The official liquidator was appointment in the year 2004 and the impugned orders are passed in the year 2012 and under these circumstances the first respondent cannot proceed against the liquidator under the provisions of the EPF Act in respect of the collected amount of contributions. The first respondent is at liberty to initiate appropriate action against the second respondent and this apart, if any dispute exists in this regard, the parties are at liberty to resolve the same by following the procedures contemplated under law. However, it is made clear that in view of the express bar on legal proceedings against the liquidator, the Writ Petition is to be considered. Accordingly, the impugned orders passed by first respondent are quashed and the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Deputy Registrar/Official Liquidator,
Tamilnadu Cooperative
Oilseeds Growers Federation Ltd,
55, Thiru-Vi-Ka Industrial Estate,
Ekkattuthangal,
Chennai- 600 097.

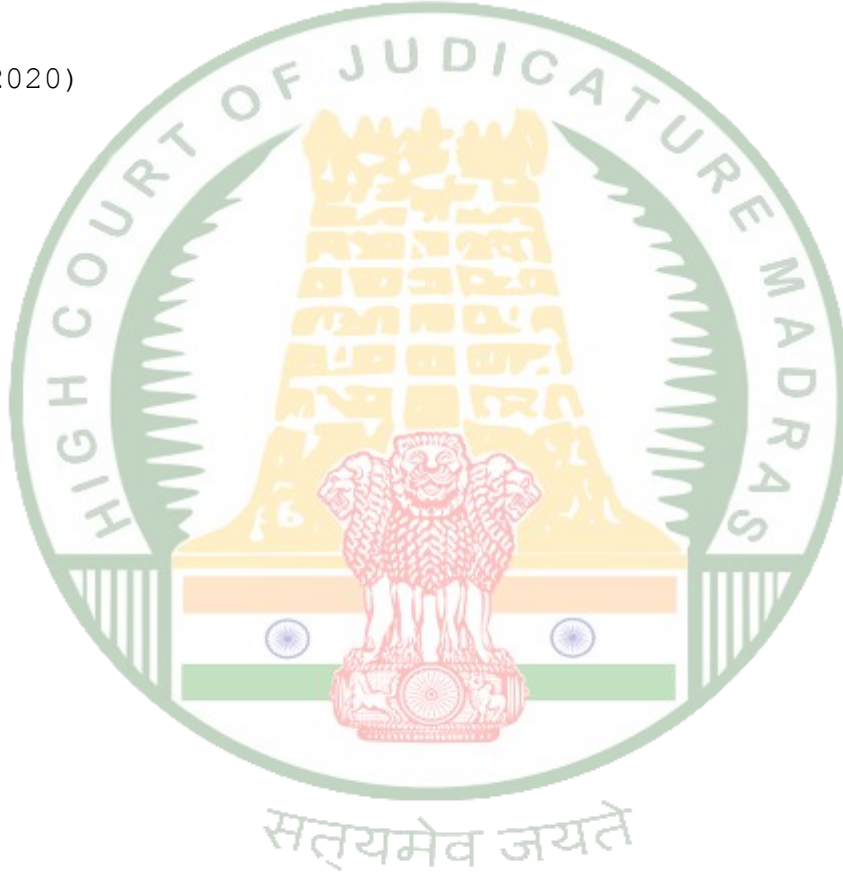
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3. Commissioner of Civil Supplies,
Ezhilagam, Chepauk,
Chennai- 600 005.

+1 CC to Govt. Pleader sr 100403.
+1 CC to Mr.K. Ramu, Advocate sr 100126
+1 CC to Mr.P.Anbarasan, Advocate sr 10001.

W.P.No.2737 of 2013
and
MP.No.1 of 2013

GMR (CO)
SP(22/01/2020)



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