

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 06-11-2019
Coram
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.3301 of 2015

Tamil Nadu Khadi and Village Industries Board,
Represented by its Chief Executive Officer,
Kuralagam,
Chennai-600 108.

.. Petitioner

vs.

The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Rajaji Salai,
Tambaram,
Chennai-600 045.

.. Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the respondent proceeding in TB/RO/TAM/6774/Gr.54/PDC/2014 dated 19.12.2014 to pay Rs.20,38,786/- towards damages and Rs.16,92,174/- towards interest, as per the provisions of Sections 14-B and 7-Q of the EPF Act, respectively and quash the same.

For Petitioner : Mr.S.K.Bose.

For Respondent : Mr.R.Visnu for Mr.K.Ramu

O R D E R

The order dated 19.12.2014 passed by the respondent under Sections 14-B and 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is under challenge in the present writ petition.

2. The writ petitioner is the Tamil Nadu Khadi and Village Industries Board.

3. The learned counsel for the writ petitioner-Board made a submission that the writ petitioner-Board had already paid the contributions. However, the interest as well as the

damages alone are yet to be paid. The writ petitioner-Board has given permanent status to 68 workers, who all are working in the functioning Soap Units under time scale of pay as the orders of the High Court in W.A.Nos.662 to 664 of 2001 dated 23.11.2009. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, applies to all permanent employees of the Soap Units. The respondent issued an order on 30.08.2013, directing the writ petitioner-Board to pay the contributions for the period from 04/1983 to 03/2010, a sum of Rs.18,30,968/-. Thereafter, the Assistant Provident Fund Commissioner quantified the interest as well as the damages to be paid and accordingly, directed the writ petitioner-Board to pay a sum of Rs.37,30,960/- as per Sections 14-B and 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, for the belated payment of EPF amount.

4. The learned counsel for the writ petitioner-Board further states that the writ petitioner-Board is running at loss and they are not in a position to pay the contributions immediately. However, the writ petitioner-Board is unable to establish that the writ petitioner-Board is a Sick Unit under the provisions of the relevant Statute. In the absence of establishing that an establishment is a Sick Unit, already declared under the Statute, the Court cannot grant any waiver of the statutory contributions or the consequential interest and the damages.

5. This apart, the order passed under Sections 14-B and 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is an appealable order and an appeal is provided under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Thus, the writ petitioner-Board ought to have preferred an appeal before the Appellate Tribunal constituted under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

6. Admittedly, no such appeal has been filed by the writ petitioner-Board. Those disputed facts and issues raised with reference to the calculation or otherwise, cannot be adjudicated in a writ proceeding. All such disputed facts are to be adjudicated with reference to the original documents as well as the evidences available and such an exercise cannot be done by the High Court under Article 226 of the Constitution of India.

7. As far as the appeal is concerned, the writ petitioner-Board had not filed any appeal within the time limit prescribed under the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952 and therefore, they themselves have chosen not to prefer any appeal and such a right cannot be now restored by the High Court in view of the elaborate judgment delivered by this Court in WP No.28363 of 2013 dated 06.11.2019, wherein this Court has held that the uncondonable delay cannot be condoned by the High Court, enabling the aggrieved person to prefer an appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and under these circumstances, this Court cannot give any liberty for the purpose of filing an appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Accordingly, the writ petitioner-Board is bound to pay the amounts as calculated by the respondent-organisation in the impugned proceedings and accordingly, settle the said amount as expeditiously as possible.

8. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

Svn

To

1.The Chief Executive Officer,
Tamil Nadu Khadi and Village Industries Board,
Kuralagam,
Chennai-600 108.

2.The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Rajaji Salai,
Tambaram,
Chennai-600 045.

+1 cc to Mr.S.K.Bose Advocate sr92855
+1 cc to Mr.K.Ramu Advocate sr92704

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