

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.477 of 2015

and

M.P.No.1 of 2015

M/s.S 428 Gendiganahalli PAC Bank Ltd.,
Represented by Secretary,
Mrs.V.Revathy,
Gendiganahalli,
Palacode - 635 205 ... Petitioner

Vs.

The Assistant Provident Fund Commissioner (PDC)
Employees Provident Fund Organisation,
Sub Regional Office,
S.J.Plaza, Swarnapuri,
Salem - 636 004 ... Respondent

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for records from the file of the Respondent in
proceedings Order Ref.No.TN/SLM/SRO/PDC/47128/KR-
03/14B/PROCEEDINGS/2014 dated 26.08.2014 and quash the same.

For Petitioner : Mr.S.Gunalan

For Respondent : M/s.R.Meenakshi

O R D E R

The order passed by the respondents in proceedings dated 26.08.2014 under Section 14-B of the 'Employee's Provident Fund and Miscellaneous Provisions Act, 1952' [hereinafter referred to as 'EPF & MP Act'] is under challenge in the present writ petition.

2. The petitioner is an institution, registered under the Co-operative Credit Societies Act, 1904. The petitioner is an establishment under the EPF & MP Act. On account of non-payment of the contributions, actions were initiated by the respondent against the writ petitioner. Subsequently, the

damages for the belated payment of contributions were assessed and accordingly, the authorities competent under the EPF & MP Act, passed the order impugned in the proceedings dated 26.08.2014 under Section 14-B of the Act. Challenging the said order, the petitioner filed the present writ petition.

3. Though the learned counsel for the writ petitioner pleads that the company is in financial crisis, as per the proviso clause to Section 14-B of the Act, the petitioner is unable to establish that it is a sick company, declared under the provisions of the 'Board for Industrial and Financial Reconstruction (BIFR) Act'. In the absence of establishing that a company is a sick company under the provisions of the BIFR Act and it was declared so, the damages quantified cannot be exercised, so as to reduce the quantum of damages assessed by the authority competent under Section 14B of the EPF and MP Act.

4. The writ petitioner also not preferred the Statutory appeal as contemplated under the provisions of the EPF and MP Act. Without exhausting the remedy available under the Act, the present writ petition is filed.

5. Let us now consider the spirit of Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act 1952. Undoubtedly, Section 14-B of the Act provides Power to the authorities to recover damages. Where an employer makes default in the payment of any contribution to the Fund, the [Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to him, then they are empowered to impose penalty. Such damages not exceeding the amount of arrears, as may be specified in the Scheme.

6. However, Proviso Clause to Section 14-B of the Act enumerates that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.]

7. Now, the writ petitioner came forward with a plea that they will pay the damages by way of installments.

8. In view of the said submission, the writ petitioner is directed to pay the entire dues as per the impugned order dated 26.08.2014 in Five(5) equal installments and the first installment commencing from 01.12.2019. In the event of any default on the part of the writ petitioner in paying the monthly installments, the respondent is at liberty to proceed against the writ petitioner to recover the amount by following

the procedures as contemplated under the relevant Act and Rules.

9. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

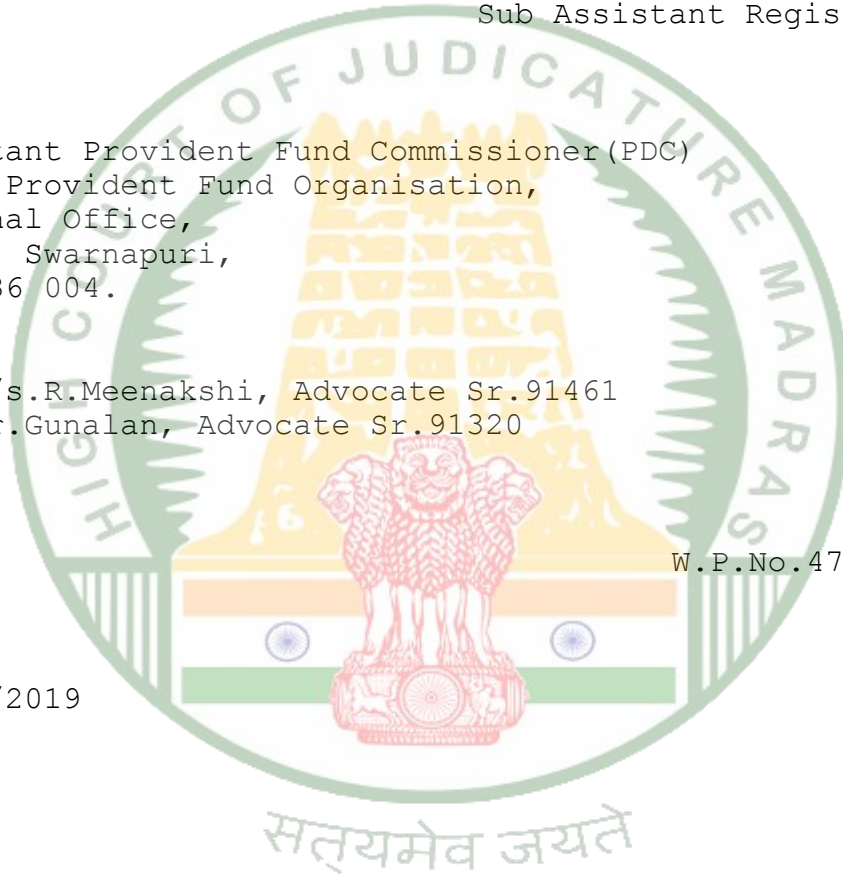
To

The Assistant Provident Fund Commissioner(PDC)
Employees Provident Fund Organisation,
Sub Regional Office,
S.J.Plaza, Swarnapuri,
Salem - 636 004.

+1cc to M/s.R.Meenakshi, Advocate Sr.91461
+1cc to Mr.Gunalan, Advocate Sr.91320

W.P.No.477 of 2015

mg[co]
srg 21/11/2019



WEB COPY