

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.9560 of 2019
and WMP.No.10176 of 2019

Morgan Industries Ltd.,
Mahatma Gandhi Road
Chennai-600 034

Rep. by its Managing Director

... Petitioner

-vs-

1.The Assistant Provident Commissioner
P.B.No.588, Shree Complex
D.Block, No.18
Madurai Road
Trichy-620 008

2.The Recovery Officer
Office of the Employees Provident Fund
Organisation, Regional Office
P.B.No.588, Shree Complex
D Block, No.18
Madurai Road, Trichy.

.... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Mandamus directing the 1st respondent to permit the petitioner to remit the sum demanded vide orders dated 11.01.2017 in proceedings No.TN/SRO-TRY/PDC/C-22/32451/14B PROC/2017 passed under Section 14B and orders dated 05.01.2017 and 11.01.2017 in Proceedings No.TN/SRO-TRY/PDC/C-22/32451/7Q PROC/2017 passed under Section 7Q of the EPF Act Order, on monthly installments for 35 months on the basis of its representation dated 27.10.2017 and 27.03.2018.

For Petitioner : Mr.Haroon AL Rasheed
for M/s.T.S.Gopalan & Co.

For Respondents : Ms.V.J.Latha for R1 and R2.

O R D E R

The Writ Petitioner has approached this court challenging the order of the respondent-EPF Organisation claiming a sum of Rs.39,90,279/- towards interest and damages for the delayed payment of contribution payable by the Petitioner/Management. Notice was ordered in the Writ Petition and Mrs.V.J.Latha, learned counsel entered appearance on behalf of the respondents.

2. When the matter is taken up for hearing today, the learned counsel appearing for the Petitioner/Management would submit that during the pendency of the writ petition, the interest amount of Rs.10,20,461/- has been paid in three separate orders under Section 7 Q of the Employees Provident Fund Act (hereinafter called as "EPF Act") which fact was also not disputed by the learned counsel appearing for the respondents. However, with regard to damages to the tune of Rs.29,69,818/- which was assessed under Section 14 B of the Act, dated 11.01.2017, the Management prays for payment of the same in 30 equated monthly installments, since the Management is facing financial crisis, in view of certain facts stated in the affidavit filed in support of the writ petition.

3. At this stage, the learned counsel appearing for the EPF Organisation would submit that the learned Judge of this court has taken a decision in W.P.(MD).No.13430 of 2013 dated 14.08.2013 that statutory liability cannot be allowed to be paid by the Management in installments. The learned counsel would rely on paragraph 2 of the said order, which is extracted as hereunder:-

"The liability of the petitioner has been accepted. No Writ of Mandamus can be issued to the statutory authorities to permit the petitioner to pay the Employees' Provident Contribution and dues in equal monthly installments. A constitutional right, statutory right, legal right or customary right recognised and protected by law alone can be enforced through Courts of Law, under Article 226 of the Constitution of India. Even a concession granted by any authority, de hors the Statutory Rules, would not confer any right on the parties, to seek for a mandamus to be enforced in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India."

4. At this juncture, the learned counsel for the Petitioner would submit that the learned Judge has passed orders in terms of statutory contribution payable by the Management and in this case, the Provident Fund contribution has been paid and interest has also been paid during the pendency of the Writ Petition. While so, what is sought for in this Writ Petition is payment of equated monthly installments only for the damages assessed under Section 14B and 7Q of the EPF Act.

5. This Court, is in agreement with the submission made on behalf of the Writ Petitioner/management. In view of the reasons stated in the affidavit, expressing some difficulties in paying the entire dues towards interest and damages, the petitioner/management is permitted to pay the same in 30 equated monthly installments as mentioned in their Memo dated 01.07.2019. Although the learned counsel for the EPF Organisation stoutly opposed for such order being passed, this court is of the view that in the interest of justice, such payments in installments can be permitted.

6. In any event, ultimately, the interest of the organisation has to be secured and protected. In this case, when these payments are made in monthly installments, it would only result in realisation of the entire amount towards damages without any challenge made to such assessment made by the 2nd respondent. Therefore, to secure the ends of justice, this order is passed after recording the memo of compromise filed on behalf of the Petitioner, which reads as under:-

"The Petitioner states that the above Writ Petition was filed seeking for a direction to the 1st respondent to entertain representation of the Petitioner and to provide installment to remit the damages and interest claimed in terms of order dated 11.01.2017 to the tune of Rs.39,90,279/-. As against the demand the Petitioner has already deposited a sum of Rs.10,20,461/- towards interest vide 3 separate orders under Section 7Q of the Employees Provident Fund Act. Hence, as on date the Petitioner is only liable to pay a sum of Rs.29,69,818/- being the sum demanded as damages by way of 14B orders dated 11.01.2017.

The Petitioner states that given the precarious financial condition of the Petitioner it would deposit the aforesaid amount on 30 monthly instalments starting from July 2019 at the rate of Rs.98,994 per every month. The Petitioner would also comply with the remittance of monthly instalments.

It is therefore prayed that this Hon'ble Court may be pleased to permit the Petitioner to remit the amount demanded by way of 14B orders dated 11.01.2017 to the tune of Rs.29,69,818 on monthly instalments starting from July 2019 at the rate of Rs.98,994/- and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

7. Taking into account the above Memo, the 1st respondent is directed to accept the equated monthly installments of Rs.98,994/- which becomes payable on or before 10th of every month commencing from July 10, 2019 and the same shall be continued to be paid every month without any failure. In case, there is any default on the part of the Management, it is open to the Organisation to proceed further against the Management, in terms of the Regulations made thereunder.

8. The Writ Petition stands disposed of in the terms as indicated above. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

nvsri

To

1. The Assistant Provident Commissioner
P.B.No.588, Shree Complex
D.Block, No.18
Madurai Road
Trichy-620 008

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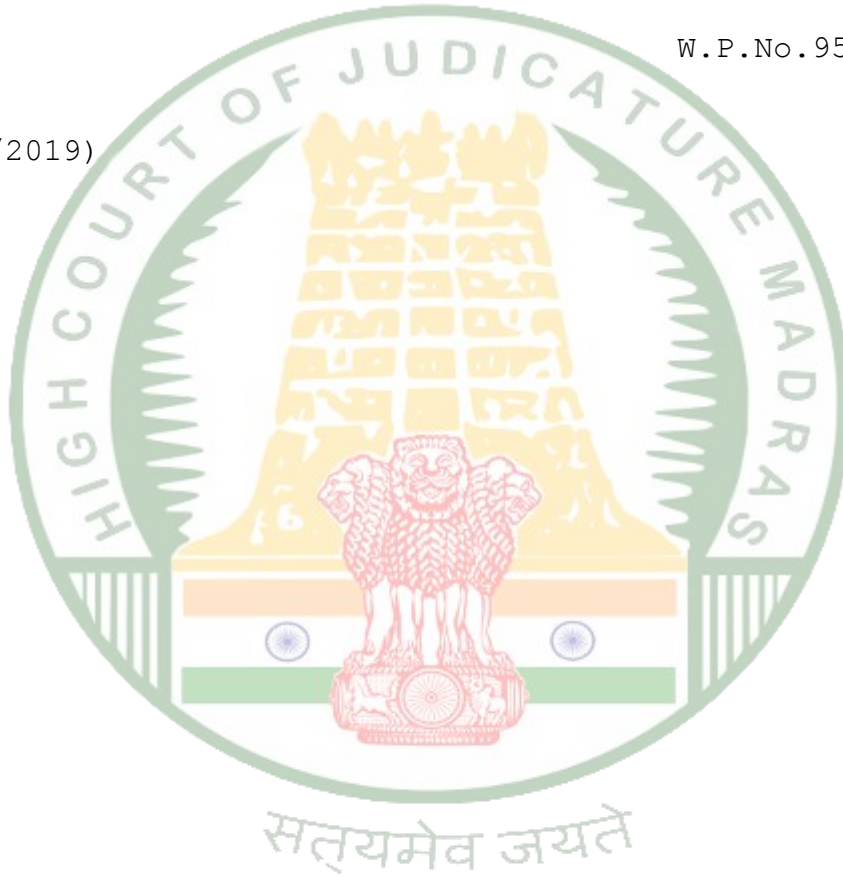
2.The Recovery Officer
Office of the Employees Provident Fund
Organisation, Regional Office
P.B.No.588, Shree Complex
D Block, No.18
Madurai Road, Trichy.

+1cc to Ms.V.J.Latha, Advocate SR.No.57020

+1cc to Mr.M/s.T.S.Gopalan & Co, Advocate SR.No.56980

W.P.No.9560 of 2019

GP (CO)
GMY (20/08/2019)



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