

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2019

CORAM

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

W.P.No.30509 of 2014

Central Board of Trustees, EPF

Represented by

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
No.3, Rajaji Salai,
Tambaram,
Chennai - 600 045

..Petitioner

Vs.

1.Front Line Printers(P) Ltd.,
M7, Thiru VI-KA Indl Estate,
Guindy, Chennai - 600 032

2.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi - 110 092

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the Proceedings of the 2nd respondent dated 19-08-2014 in Ref.No.ATA.No.235(13) 2014, quash the order passed therein by issue of Writ of Certiorari or any other appropriate writ, order or direction in the nature of writ.

For Petitioner :Mr.R.Vishnu

For Mr.K.Ramu

For Respondents :For R1 - No appearance

For R2 - Tribunal

O R D E R

The order passed by the Employees' Provident Fund Appellate Tribunal dated 19.08.2014 in Ref.No.ATA.No.235(13) 2014 is sought to be quashed.

2. The learned counsel for the writ petitioner made a submission that the 1st respondent company is covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act [hereinafter referred to as 'EPF & MP' Act]. There was a delay in payment of contributions with reference to the provisions of the Act. Accordingly, actions were initiated and the authorities competent passed an order under Section 14B of the EPF & MP Act. The said order was taken by way of an appeal before the Appellate Tribunal and the Appellate Tribunal set aside the order passed by the Assistant Provident Fund Commissioner in proceedings dated 04.03.2014, mainly on the ground that the Commissioner had not find out the element of mensrea on the part of the 1st respondent company in delaying the remittance of Provident Fund dues. To impose the penal for damages, the Commissioner should have to ensure that there was a willful and deliberate default on the part of the company, while dealing the remittance of provident fund dues.

3. At the outset, it is contended that the Appellate Tribunal arrived a conclusion that the Assistant Commissioner has not considered the mensrea for the purpose of imposing the damages under Section 14B of the Act and accordingly, set aside the order.

4. In this regard, the learned counsel appearing on behalf of the writ petitioner solicited the attention of this Court that the order is a Speaking one and the original order dated 04.03.2014 reveals that the Assistant Commissioner had applied his mind carefully and the facts regarding the case was observed that the employer / 1st respondent even not remitted the contributions deducted from the wages of the employees within due date, which is a criminal case under Section 405 and 406 of the Indian Penal Code.

5. Taking note of these facts and circumstances, the Assistant Commissioner arrived a conclusion that there is a mensrea and the delay / offence, when a specific conduct of the 1st respondent Management has been taken into consideration and the same was recorded for the purpose of imposing damages under Section 14B of the Act. This Court is of an opinion that there is no perversity or irregularity in respect of the applications of the provisions of the Act. The Appellate Tribunal has failed to consider Paragraph 3 of the order dated 04.03.2014 and held that the Assistant Commissioner had not considered the mensrea. Such a finding is contradictory to the facts and circumstances considered by the Assistant Commissioner in his proceedings dated 04.03.2014 issued under Section 14B of the EPF & MP Act.

6. This being the facts and circumstances, the order passed by the 2nd respondent in proceedings dated 19-08-2014 in Ref.No.ATA.No.235(13) 2014 is quashed and the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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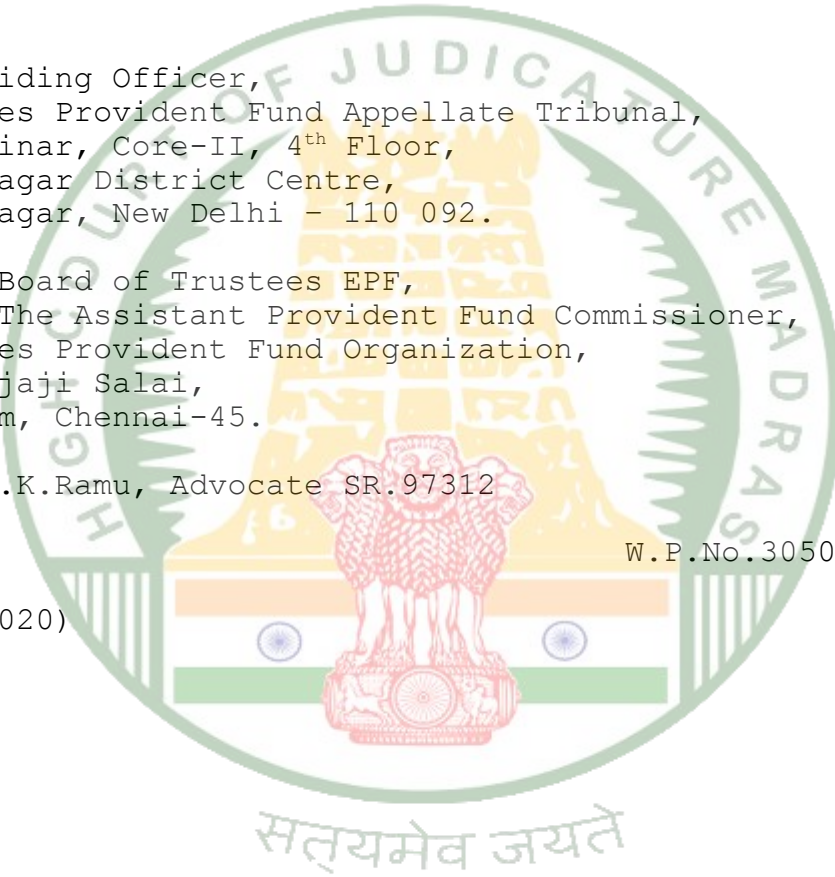
To

- 1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi - 110 092.
- 2.Central Board of Trustees EPF,
Rep.by The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
No.3 Rajaji Salai,
Tambaram, Chennai-45.

+1cc to Mr.K.Ramu, Advocate SR.97312

W.P.No.30509 of 2014

AK(CO)
CB(10/01/2020)



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