

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.11.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.33304 of 2014
and
MP.No.1 of 2014

Assistant Provident Fund Commissioner
Office of the Regional Provident Fund Commissioner,
Bhavishya Nidhi Bhawan, Dr. Balasundaram Road,
Coimbatore - 641018. ...Petitioner

vs.

1. The Presiding Officer
Employees Provident Fund Appellate Tribunal
Scope Minar Core-II
4th Floor, Lakshmi Nagar,
New Delhi- 110 092.

2. M/s. Sam Turbo Industry P Ltd.,
Avinashi Road,
Neelambur, Coimbatore 641 062. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to call for the records relating to the proceedings of first respondent dated 13.08.2014 in ATA.No.275(13) 2014, and quash the order passed therein by issue of a Writ of Certiorari or any other appropriate writ, order or direction in the nature of writ.

For Petitioner : Mr. C. Kulanthaivel

For Respondents : R1- Tribunal
Mr. S. Gunalan for R2

O R D E R

The order passed by the Appellate Tribunal in ATA No.275 (13) 2014 dated 13.08.2014 is under challenge in the present Writ Petition.

2. The writ petitioner is the Assistant Provident Fund Commissioner and the learned counsel appearing on behalf of the writ petitioner states that the Employees Provident Funds Appellate Tribunal has not considered the primary objections

regarding the maintainability of the Appeal under Section 17-I of the Employees Provident Funds Miscellaneous Provision Act. In view of the fact that the letter issued by the competitive authority for the purpose of conducting the enquiry under section 7 A of the Act in letter dated 26.03.2014 was under challenge before the Appellate Tribunal in the Appeal filed under Section 7-I of the Act. The letter dated 26.03.2014 was not a final order and further it was a letter issued to the respondent company to furnish the details and records enabling the authorities to conduct enquiry for the purpose of passing a final order under Section 7-A of the Employees Provident Funds Miscellaneous Provision Act.

3. The letter dated 26.03.2014 is enclosed in the typed set of papers filed along with the present Writ Petition and the relevant paragraph of the letter is extracted hereunder:

"On Scrutiny of the remittance details in respect of your establishment for the period from 1995-96 to 2011-12, it has come to light that you have not remitted a sum of Rs.28,80,154/- towards EPF, EPS, and EDI dues. You are therefore advised to remit the said short remittance within 5 days of receipt of this letter, failing which further coercive/recovery action shall be initiated against you and the establishment without any further notice"

4. On perusal of the above letter, it reveals that the second respondent was advised to remit the said short remittance within five days of receipt of the letter, failing which further coercive/recovery action shall be initiated. The language used in the letter dated 26.03.2014 is in the form of advise to the second respondent management and there was no direction as it is to make the payment. However, the advice was otherwise taken by the management and Appeal was filed.

5. Under those circumstances, this Court is of the opinion that the Tribunal ought to have directed the authorities to conduct an enquiry and pass an order under Section 7-A of the Employees Provident Funds Miscellaneous Provision Act. Contrarily, the Appeal was decided on merits and the letter was set aside. The letter being not a final order cannot constitute the cause for filing an appeal if at all the letter was issued in violation of the Rule or Provisions of the Act, then the matter is to be remitted for conducting enquiry basing on merits under Section 7-A of the Act. This being the principles to be

followed, this Court is of the opinion that the Tribunal order which is decided on merits cannot be sustained, consequentially the order impugned dated 13.08.2014 passed in ATA 275 (13) 2014 is quashed.

6. The writ petitioner Assistant Provident Fund Commissioner is directed to issue a fresh notice providing opportunity to the second respondent to submit the written explanations, objections as well as the documents and on receipt of the same, proceed with the enquiry by affording an opportunity to all the parties and pass appropriate orders under the provisions of the Act on merits and in accordance with law.

7. With these directions, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Asst.Registrar (CO)

/true copy/
Sub Asst. Registrar

To

1. The Presiding Officer
Employees Provident Fund Appellate Tribunal
Scope Minar Core-II
4th Floor, Lakshmi Nagar,
New Delhi- 110 092.

2.The Assistant Provident Fund Commissioner
Office of the Regional Provident Fund Commissioner
Bhavishya Nidhi Bhawan, Dr.Balasundaram Road
Coimbatore 641 018

+1 cc to Mr.C.Kulanthaivel Advocate sr97778

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