

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.09.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.19524 of 2019
and
W.M.P.No.19012 of 2019

M/s.Lotus Agencies
No.1 Sambandam Street,
G.N.Chetty Road,
T.Nagar,
Chennai – 17,
Rep.by its Partner S.Lakshmi Narasimhan
Petitioner

...

..Vs..

The Regional Provident Fund Commissioner-I,
Employees Provident Fund Organisation,
37, Royapettah High Road,
Chennai – 600 014.
...Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondent from initiating any recovery proceedings against the petitioner pursuant to the order dated 31.07.2014 in proceedings No.CC III/25/TN/84873 Enf/Reg1/2014 and further direct the respondent to consider the Review Petition filed by the petitioner dated 21.06.2019.

For Petitioner : Mr.Anand Gopalan

for M/s.T.S.Gopalan & Co.

For Respondent : Mr.V.Sundareswaran

ORDER

The order dated 31.07.2014, passed under Section 7A of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that Section 7A order was passed by respondent on 31.07.2014. Challenging the said order, the petitioner filed W.P.No.22858 of 2014 and this Court passed an order dated 17.04.2018 and the relevant paragraphs are extracted hereunder:

"12. Under these circumstances, this Court is of an opinion that the writ petitioner is at liberty to appear before the competent authorities as per the notice issued to them and place their records and documents and their statements so as to defend their case in accordance with law. The respondents are also at liberty to proceed with the enquiry proceedings conclude the same in all respects and pass orders.

13.It is made clear that the competent authorities are bound to follow the Act and Rules scrupulously, while

undertaking the process in such matters. However, the disputed allowances shall not be demanded or effected till the final disposal of the cases pending before the Hon'ble Supreme Court of India. The final decision in respect of the disputed allowances shall be kept in abeyance till such time.

14.The learned counsel for the petitioner states that the 7 (A) proceedings had been concluded and a final order has been passed. However, the order so passed need not be implemented till the final disposal of the case pending before the Hon'ble Supreme Court of India cited supra.”

3. During the relevant point of time, when the final order was passed in the writ petition, the SLP was pending before the Hon'ble Supreme Court of India. Thus, this Court also passed final order stating that the order passed need not be implemented till the final disposal of the case, pending before the Hon'ble Supreme Court of India. It is brought to the notice of this Court, that the Hon'ble Supreme Court of India passed final orders in the matter on 28.02.2019. Pursuant to the orders passed by the Hon'ble Supreme Court of India, the writ petitioner has filed the Review Petition

under Section 7B of the Act. The said Review Petition has not been taken up for hearing on the ground that the 7A order was passed in the year 2014 and the necessary grounds in this regard were not raised during the appropriate time.

4. This Court is of the considered opinion that based on the fact that the issues were pending before the Hon'ble Supreme Court of India and this Court also had not adjudicated the matter on merits. Contrarily, the writ petition was disposed of on the ground that the writ petitioner is at liberty to approach the competent authority after the disposal of the SLP by the Hon'ble Apex Court of India. Thus, the issues were not adjudicated on merits, during the relevant point of time. Undoubtedly, the scope of Review Petition is limited. However, considering the facts and circumstances and further issues were not adjudicated on merits and the Competent Authority shall consider all these aspects by entertaining the Review Application filed by the writ petitioner, adjudicate the same and pass orders in the light of the legal

principles settled by the Hon'ble Supreme Court of India, in order dated 28.02.2019.

5. The learned counsel for the respondent is right in saying that such ground ought to have been raised during the appropriate time by the writ petitioner. The writ petitioner is entitled to adjudicate the matter, in view of the fact that the issues were subjudiced during the relevant point of time before the Hon'ble Supreme Court of India. This Court also passed an order granting liberty to approach the Competent Authority after the disposal of the case by the Hon'ble Supreme Court of India. This being the circumstances aroused in this case, this Court is inclined to pass following orders:

a) The impugned order dated 31.07.2014, passed in proceedings CCIII/25/TN/84873/Enf/Regl/2014, by the respondent, is quashed.

b) The respondent is directed to entertain the Review Application filed by the writ petitioner and adjudicate the matter on merits and in accordance with law by affording opportunity to all the parties concerned. The said exercise of concluding the

proceedings shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

6. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.09.2019

Index : Yes/No.
Internet : Yes/No.
Speaking order/Non-Speaking Order

Pns

S.M.SUBRAMANIAM, J.

Pns

To

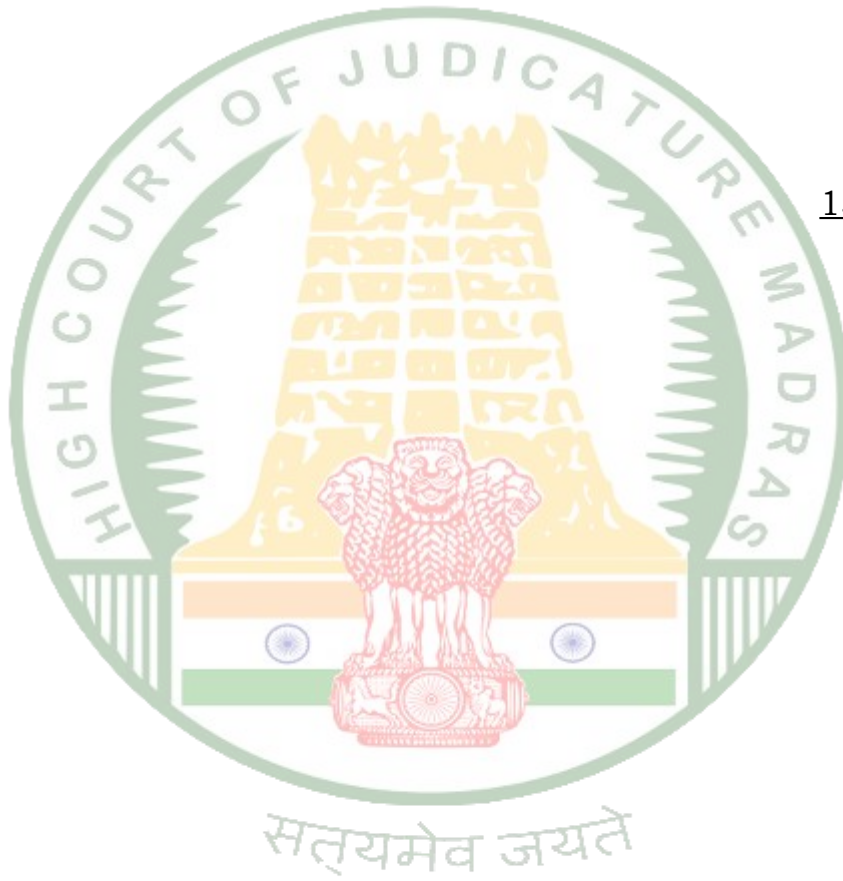
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