

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.09.2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.25400 of 2019

&

W.M.P.No.24939 of 2019

M/s.JBM Auto System Private Limited,
#1, Ford Supplier's Park, S.P.Koil,
Chengalpet Taluk,
Kancheepuram District - 603 204.
Rep by its Authorized Signatory - Mouroukayan.V

...Petitioner

..Vs..

Regional PF Commissioner - II (C & R),
Employees' Provident Fund Organization,
Regional Office : Tambaram,
3, Rajaji Salai, Chennai - 600 045.

....Respondent

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Central Government Industrial Tribunal cum EPF Appellate Tribunal in EPFA No.108 of 2019 and quash its order dated 14.08.2019 in so far as it directs the petitioner to deposit 40% the dues determined in terms of the order of the respondent dated 19.05.2014.

For Petitioner : Mr.S.Ravindran, SC
for S.Bazeerahmed

For Respondent : Mr.R.Vishnu
for Mr.K.Ramu

ORDER

The order dated 14.08.2019 passed by the Central Government Industrial Tribunal cum EPF Appellate Tribunal in EPFA No.108 of 2019 is under challenge in the present writ petition.

2.The writ petitioner is an establishment covered under the provisions of EPF & MP Act and it has been regularly paying EPF contribution on basic wages in accordance with Section 2(b) of the Act. The respondent claimed the contribution on various

allowances for the period from March 2011 to August 2013. The petitioner filed W.P.No.3730 of 2014 before this Court challenging the said proceedings. By order dated 07.02.2014, the respondent was given liberty to proceed with the case but not to make any demand. By order dated 19.05.2014, the respondent demanded contribution of Rs.2,33,88,768/-. The above order was not enforceable and was subject to the result of the writ petition. Therefore, no appeal would lie against the said order. On 14.02.2019, W.P.No.3730 of 2014 was dismissed with liberty to petitioner to approach the appropriate forum subject to satisfaction of delay.

3. Accordingly, the writ petitioner filed an appeal before the Central Government Industrial Tribunal cum Labour Court, Chennai which is the Appellate Tribunal, in terms of Section 7-I of the Act. The appeal was numbered as EPFA No.108 of 2019. The appellant pleaded that the delay of 59 days may be condoned and that the claim related to 1087 persons including trainees who are not covered under the definition of employee under Section 2 (f) of the Act, only 118 employees continued to be on the rolls of the petitioner, the balance 969 persons were unidentifiable and that therefore, waiver of deposit of amount should be substantially reduced as a condition for stay of the order of the respondent dated 19.05.2014.

4. This exactly is the dispute now raised in the present writ petition, where waiver of 40% can be granted without assigning reasons, as per the proviso Clause to Section 7-O of the Act.

5. The learned Senior counsel appearing on behalf of the writ petitioner states that the proviso clause is unambiguous that reasons must be recorded in writing for grant of waiver or to reduce the amount to be deposited under Section 7-O of the Act. In the absence of any such reasons which is recorded in writing, the order is to be scrapped. It is further contended that the writ petitioner/company has given adequate reasons for grant of waiver and considering the reasons, the authorities ought to have granted the waiver to the maximum and contrarily they are fixing 40% in a routine manner. In all such cases, a further complaint is raised that the respondent is mechanically granting waiver and directing the parties to pay 40% of the amount without any logic or without providing any reasons in writing. However, the said statements are disputed by the learned counsel for the respondent by contending that though the reasons are not recorded in the present case, the waiver is granted in a uniform manner by the Tribunal concerned.

6. In the present case, the writ petitioner is prolonging and protracting the litigation despite the fact that they are liable to pay a huge sum i.e., more than Rs.2 Crore. It is further

contended that they are evading payment by way of filing various litigations and therefore the present order impugned has to be sustained.

7. Considering the arguments of the learned Senior counsel appearing on behalf of the writ petitioner as well as the learned counsel appearing on behalf of the respondent, this Court is of the considered opinion that undoubtedly, a deposit is a precondition for filing an appeal. Section 7-0 stipulates that

"No appeal by the employer shall be entertained by Tribunal unless he is deposited with it 75% of the amount due from him as determined by an Officer referred to in Section 7A".

Thus, the Rule is unambiguous that in the event of filing an appeal, 75% of the amount due from the appellant is to be deposited. Thus, there could be no compromise in normal circumstances.

8. The legal principles to be followed is that the Rule must prevail over and the proviso clause is only an exception. The Rule is to be implemented strictly and the proviso clause is to be extended only in exceptional circumstances where the parties are able to establish that they are unable to deposit 75% or some other genuine reasons are expressed in this regard. Thus, fixing of 40% without any logic and such a waiver can never be accepted by the High Court. Even while granting such waiver or to reduce the amount to be deposited under Section 7-0, the Tribunal should consider the circumstances as well as the mitigating factors raised by the respective parties and take a decision on merits and by recording reasons in writing. Contrarily, the waiver cannot be granted in a routine manner without assigning any reason at all. In the event of grant of waiver without assigning any reasons in writing, the very purport of Section 7-0 is defeated and the Tribunal cannot exercise its discretion by granting waiver so as to defeat the main provision, which is undoubtedly unconstitutional and excess exercise of discretionary power. The excess exercise of discretionary power provided under proviso clause resulting defeating of the main provision can never be accepted and is to be treated as unconstitutional and in violation of the main provision, which contemplates that deposit of the amount due is a precondition for entertaining an appeal.

9. Thus, the Tribunal must direct all the parties as a rule to deposit 75% in all circumstances and only on exceptional and extraordinary cases, where an application is filed, then there must be an adjudication and the reasons must be recorded for granting of waiver and the quantum of amount to be waived or

reduced to be deposited under Section 7-0 of the Act.

10.As far as the present circumstances now contended before this Court reveals that the Tribunals are granting waiver without much application of mind. The respective parties are pleading for waiver and such waiver or reduction of amount is granted by exercising the discretionary power provided under the proviso clause without even recording the reasons in writing. Such a practice can never be encouraged nor be accepted. Contrarily such practice would affect the provisions and Section 7-0 of the Act and the Tribunal is not empowered to exercise the discretionary power so as to defeat the main provisions contemplated in Section 7-0 for depositing 75% of the amount due from the person who prefers to file an appeal.

11.Under these circumstances, the Tribunals hereinafter cannot grant waiver in a routine manner based on the request of the persons who are all preferring appeal. In case, an application is filed for grant of waiver under the proviso clause to Section 7-0, a proper adjudication must be undertaken and an order is to be passed by recording reasons in writing and in all other circumstances mandatory deposit contemplated under Section 7-0 must be complied with and all the persons who are all preferring an appeal must be directed to pay 75% for the purpose of entertaining an appeal under Section 7-0 of the Act.

12.This being the spirit of the provisions of the Act, this Court is of the considered opinion that the order impugned in the present writ petition, which is admittedly non-speaking is to be set aside only with reference to the benefit of waiver of deposit amount from 75% to 40%. In respect of the order passed to condone the delay, no interference is called for. If at all, the number of days of delay is disputed by the Department, it is left open to them to adjudicate the same in a manner known to law. As far as the present writ petitioner is concerned, the present writ petition is filed only challenging the waiver granted to an extent of 40% and accordingly the impugned order passed by the respondent in proceedings EPFA No.108 of 2019 dated 14.08.2019 is quashed insofar as it directs the petitioner to deposit 40%, the dues determined in terms of the order of the respondent dated 19.05.2014. Consequently, the Central Government Industrial Tribunal cum EPF Appellate Tribunal is directed to rehear the waiver application filed by the writ petitioner and consider the same by affording opportunity to all the parties and pass orders on merits and in accordance with law keeping in mind the spirit of Section 7-0 of the EPF Act within a period of four weeks from the date of receipt of copy of this order.

13. Accordingly, the writ petition stands allowed. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrm

To

1. Regional PF Commissioner - II (C & R),
Employees' Provident Fund Organization,
Regional Office : Tambaram,
3, Rajaji Salai, Chennai - 600 045.

2. The CGIT Cum,
EPF Appellate Tribunal,
B Wing, 1st Floor,
Shastri Bhawan,
26, Haddows Road, Chennai-6.

+lcc to Mr.K.Ramu, Advocate sr.78290

+lcc to S.Bazeerahmed, Advocate sr.77594

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