

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.10.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.26133 of 2019

&

W.M.P.No.25507 of 2019

Pachaiyappa's Trust Board,
Rep by its Secretary,
Pachayappa's College Campus,
113, Harrington Road,
Chennai - 600 030.

...Petitioner

..Vs..

1.The Secretary to Government,
Labour Department,
Government of Tamil Nadu,
Fort St.George,
Chennai - 600 009.

2.The Regional Employees Provident Fund,
Commissioner - II (Complaints & Recovery),
Employees Provident Fund Organization,
Regional Office, Tambaram,
Chennai - 600 045.

3.The Commissioner,
Employees Provident Fund Organization,
Royapettah High Road,
Chennai - 600 014.

...Respondents

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of mandamus directing the respondents to consider and dispose of the application of the petitioner dated 12.12.2018 filed under Section 17(1) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 to the first respondent, expeditiously on merits in accordance with law.

For Petitioner : Mr.S.Senthil
For Respondent : Mr.D.Suriyanarayanan,A.G.P
(for R.1)
Mr.K.Ramu (for R.2 & R.3)

ORDER

The relief sought for in the present writ petition is for a direction to direct the respondents to consider and dispose of the application of the petitioner dated 12.12.2018 filed under Section 17(1) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

2.The representation sought to be disposed of in the present writ petition dated 12.12.2018 is enclosed in page No.45 of the Typed set of papers filed along with the writ petition. In the said representation, the petitioner seeks exemption from the Act itself on the ground that they are having pension scheme of their own and therefore they need not pay contribution under the provisions of EPF Act. When the pension scheme is already available in the writ petition, the provisions of the Act cannot be made applicable in respect of the employees who are all working under pensionable services.

3.The learned counsel appearing on behalf of the respondent states that the EPF Authorities/management have already paid pension to all the employees who are all coming under pension scheme. It is pertinent to note that the Teachers working in the College are already brought under the Tamil Nadu Pension Rules and therefore they need not be brought under the EPF Scheme at all. When the College Teachers are already approved Teachers by the Competent Authorities of the Education Department of the Government of Tamil Nadu and they were appointed as per the Regulations of the University Grants Commission and they are made as Government employees and pension is being disbursed under the Tamil Nadu Pension Rules or Tamil Nadu GPF Scheme, then they need not be brought under the EPF Scheme by the respondents.

4.However, the learned counsel appearing on behalf of the respondent states that in respect of other employees who are all employed on consolidated pay under the self finance scheme, those employees are to be brought under the scheme as there is no separate pension scheme for those employees working under the self finance scheme. Therefore, the respondents are bound to conduct an enquiry in this regard and ascertain the

applicability of the Act, so as to pass further orders by following the procedures contemplated under the Act.

5.The notice issued in this regard on 31.05.2018 reveals that the Authorities have taken steps to determine the applicability of the Act. However, it is made clear that the EPF Act cannot be made applicable in respect of the employees who are all already covered under the existing pension schemes and in respect of all other employees who are all not covered under the pension scheme, suitable enquiry may be conducted after hearing the parties concerned.

6.Under these circumstances, the writ petitioners are bound to submit all the relative documents along with their objections and explanations if any, enabling the respondents to adjudicate the matter after affording opportunity to the writ petitioner and take a decision in this regard.

7.Mere show cause notice or the representation submitted by the writ petitioner would not provide the cause for issuing a direction to the Authorities concerned, in case where an enquiry is contemplated, the Authorities competent are at liberty to conduct an enquiry in order to take a decision with reference to the applicability of the Act or otherwise. This being the principles to be followed, the writ petitioner is at liberty to submit objections/explanations as well as documents to the respondent enabling them to adjudicate the matter. The respondents are directed to consider the representation submitted by the writ petitioner dated 12.12.2018 and also documents if any submitted along with the orders passed in this writ petition and take a decision by following the procedures and in consonance with the Act.

8.With these directions, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mrm
To

1.The Secretary to Government,
Labour Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.

2.The Regional Employees Provident Fund,
Commissioner - II (Complaints & Recovery),
Employees Provident Fund Organization,
Regional Office, Tambaram,
Chennai - 600 045.

3.The Commissioner,
Employees Provident Fund Organization,
Royapettah High Road,
Chennai - 600 014.

+1cc to Mr.S.Senthil, Advocate SR.84847
+1cc to Mr.K.Ramu, Advocate, SR.85269
+1cc to the Government Pleader SR.85475

W.P.No.26133 of 2019

LN(CO)
CB(21/11/2019)