

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 04.03.2019

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE**W.P. (MD) No. 4032 of 2015****and****M.P. (MD) No. 1 of 2015**

M/s. Adems (KTDC Contract)
63 A, Thanislase Compound
Puthkudi
Nagercoil 629 001
Rep. by its Proprietor

... Petitioner

-vs-

The RPF Commissioner II
EPF Organization
Sub- Regional Office
66, Water Tank Road
Nagercoil- 629001

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent herein in his proceedings in No. TN/NGL/ 79601/ 14B/ 159/ PDC(3)/2014, dt. 30.07.2014 and consequential order in TN/NGL/ 79601/PDC/ 8F/2015, dt. 14.01.2015 and quash the same.

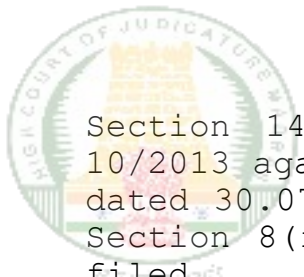
For Petitioner : Ms. K. Hema Karthikeyan

For Respondent : Mr. K. Gurunathan

ORDER

This instant Writ Petition has been filed challenging the ex parte order dated 30.07.2014 in TN/NGL/ 79601/ 14B/ 159/ PDC(3)/ 2014 and the consequential order dated 14.01.2015 passed in TN/NGL/ 79601/PDC/ 8F/2015.

2. The respondent has initiated proceedings under Section 14(B) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (herein after called as Act, 1952) against the petitioner for default committed by him in the payment of Provident Fund Contributions. The respondent after issuance of the show cause notice to the petitioner, which was duly acknowledged by him, initiated proceedings under Section 14(B) of the Act, 1952 and fixed the date of hearing on 25.07.2014. Since the petitioner failed to appear before the respondent on 25.07.2014, by the impugned proceedings dated 30.07.2014, the respondent levied damages under



Section 14(B) of the Act, 1952 for the period from 02/2013 to 10/2013 against the petitioner. Aggrieved by the exparte proceedings dated 30.07.2014 and the consequential order dated 14.01.2015 under Section 8(f) of the Act 1952, the instant writ petition has been filed.

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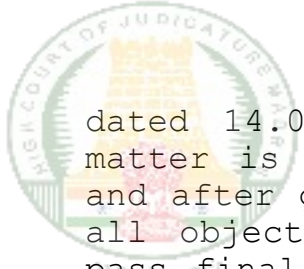
3. Heard Mr. Hema Karthikeyan, learned counsel appearing for the petitioner and Mr. K. Gurnathan, learned counsel appearing for the respondent.

4. It is the case of the petitioner that they have paid the provident fund contributions as well as interest to the respondent though belatedly. It is also their case that they are not liable to pay damages under Section 14(B) of the Act, 1952 as there is no *mens rea* and deliberate intention to pay the provident fund contribution belatedly.

5. The learned counsel for the respondent would submit that the petitioner has deliberately avoided to appear before the respondent on the first hearing date on 25.07.2014. According to him the petitioner has acknowledged the receipt of summons dated 04.07.2014 sent by the respondent. According to him, the petitioner, despite having been given sufficient opportunity neither disputed the default nor sought time to file his reply nor sent any representative to appear before the respondent on the first hearing date i.e., 25.07.2014. He would further contend that the Act 1952 is a beneficial legislation to protect the interest of employees, whose right will have to be protected. It is also his submission that even though the impugned order was passed on 30.07.2014, till date they are unable to recover the damages awarded under Section 14(B) of the Act, 1952.

6. Admittedly the impugned proceedings is an exparte order and the said ex parte order was passed on the first hearing date itself. It is also not in dispute that the provident fund contributions together with interest have been paid by the petitioner to the respondent, though belatedly. Section 14(B) of the Act, 1952 gives power to the respondent to recover damages from the petitioner establishment for delayed payment of contributions. It is also the case of the petitioner that there is no *mens-rea* or deliberate intention on their part to pay the provident fund contributions within the stipulated time prescribed under Act 1952. That being the case, the petitioner should certainly be given an opportunity to place all his objections before the respondent for the effective adjudication of the claim made by the respondent for recovery of damages under Section 14(B) of Act.

7. In the instant case, no such opportunity was given by the respondent, since the petitioner was set exparte on the first hearing date itself. The respondent has violated the principles of natural justice. Therefore, this Court is of the considered view that the impugned order dated 30.07.2014 and the consequential order



dated 14.01.2015 of the respondent are hereby quashed and the matter is remanded back to the respondent for fresh consideration and after giving sufficient opportunity to the petitioner to place all objections available to him under law the respondent shall pass final orders within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that the petitioner shall co-operate with the respondent in all respects for the effective adjudication of the dispute.

8. In view of the order passed in this writ petition the petitioner is directed to withdraw the statutory appeal filed against the impugned order dated 30.07.2014 as well as the consequential order dated 14.01.2015.

9. With the aforesaid direction, the Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar(CS)

TO
The RPF Commissioner II
EPF Organization
Sub- Regional Office
66, Water Tank Road
Nagercoil- 629001

Copy to: The Section Officer, E.R. Section
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1cc to Mr.K.GURUNATHAN, Advocate, SR.No. 51609

W.P. (MD) No. 4032 of 2015

and

M.P. (MD) No. 1 of 2015

AAV

KK/SAR-/19.03.2019/3P-5C