



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS. JUSTICE R. THARANI

W.P (MD) No. 937 of 2019

and

C.M.P. (MD) No. 8446 of 2019

The Regional Provident Fund Commissioner,
Water Tank Road, Nagercoil,
Kanyakumari District-629 001. .. Appellant/3rd Respondent

Vs.

1.C.Albin Raby ... 1st respondent/Writ Petitioner

2.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
SCOPE Minar,
CORE II 4th Floor Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi-110 092.

3.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
10.A/3, St.Thomas Road,
High Grounds, Tirunelveli - 627 011. .. Respondents 2 & 3/
Respondents 1 & 2

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order passed in W.P.(MD)No.1335 of 2011 dated 24.01.219 by allowing the writ appeal.

PRAYER IN WP(MD). 1335 OF 2011:

Writ petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records on the file of the 1st Respondent in ATA 177(13)2004, dated 12-10-2010 and quash the same.

For Appellant : Mr.K.Gurunathan

ORDER

[Judgment of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.K.Gurunathan learned counsel for the appellant.

2. In the light of the order, we propose to pass in the writ appeal, notice to the respondents is dispensed with.

3. This appeal filed by the Regional Provident Fund Commissioner is directed against the order made in W.P.(MD)No.1335



of 2011, dated 24.01.2019.

4. The first respondent challenged the order passed by the second respondent, dated 12.10.2010, passed under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act'). According to the appellants, the respondent had employed 20 persons and therefore the employees are bound to cover under the provisions of the Act.

5. The learned Single Bench took note of the factual position, the order passed by the appellant Organization under Section 7(A) of the Act and found that the authorities themselves had recorded that there were less than 20 employees in the first respondent organisation. Therefore, it is found that there is no material to show that the persons, who did the sizing work were working in the first respondent establishment or were working under the supervision of the first respondent. However, the learned Single Bench took into consideration that the first respondent establishment has been closed down for about more than two decades on account of severe financial crises.

6. We are informed by the learned counsel for the appellant that when the writ petition was entertained, a conditional order was passed directing the respondent to pay the entire amount towards the Employees' Provident Fund Contribution and the respondent has also complied with the same. Since we do not propose to interfere with the order passed in the writ petition and the amount had already been remitted by the respondent establishment and they closed down two decades ago, while confirming the order passed by the learned Single Bench, we make it clear that the respondent cannot insist upon the amount already remitted by them pursuant to the interim orders passed in the writ petition, which can be disbursed to the employees of the first respondent establishment. It is made clear that this order cannot be taken as precedent.

7. In view of the above, this writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Ta

+1CC TO MR.K.GURUNATHAN, Advocate Sr. No. 87305

W.A. (MD) No.937 of 2019
16.09.2019