



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

W.P(MD)No.17441 of 2019

and

W.M.P(MD)No.13934 of 2019

WEB COPY

New Security Force,
A Partnership Firm,
Represented by its, Managing Partner,
P.Prabhakar.

... Petitioner

Vs.

The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
P.B.No.588, Sree Complex,
'D' Block, No.18, Madurai Road,
Trichy.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, to call for the records of the respondent dated 05.04.2018, in No.TN/RO-TRY/PDC/C-11/44863/14B/PROC/2017-18 and quash the same as illegal and arbitrary.

For Petitioner : Mr.P.Ganapathi Subramanian
For Respondent : Mr.G.Dharmaraja

O R D E R

The order under challenge is penal damages imposed by the respondent under Section 14 B of Employee's Provident Funds and Miscellaneous Provisions Act, 1952. (herein after referred as 'the Act').

2.The learned counsel appearing for the petitioner would submit that the default committed by the petitioner is not willful. Since the employer, namely, BSNL (Bharath Sanchar Nigam Limited) has failed to make payment to provident fund, they could not make the payment.

3.On the other hand, the learned counsel appearing for the respondent would submit that as per Section 7-I of the Act an appeal remedy is available. As per Rule 7 of the Employee's Provident Funds Appellate Tribunal (Procedure) Rules, 1997, if any person is aggrieved by a notification issued by the Central Government, he may file an appeal before the Tribunal within 60 days from the date of issue of the notification/order and in case of the delay, the



tribunal can condone the delay. Since the petitioner has not filed the appeal in time, he is not entitled to seek their remedy.

4.Considering the submissions that there is an appeal provisions available before the tribunal under Section 7 -I of the Act, as held by this Court in the case of **St.Michael's Higher Secondary School Vs. Assistant Provident Fund Commissioner (Compliance), Employees Provident Fund Organization and another** reported **2019-1-LLJ-420 (Mad)**, this writ petition is not maintainable.

5.Considering the facts and circumstances of the case, a direction is issued to the petitioner to present an appeal before the tribunal (Employee Provident Fund Appellate Tribunal) within a period of two weeks from the date of receipt of a copy of this order. In the event of filing an appeal, the respondent/Employees Provident Fund Tribunal is directed to entertain the appeal without insisting for condonation of delay or any deposit and dispose of the same on merits and in accordance with law as expeditiously as possible.

6.The Writ Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar(CS)

To

The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
P.B.No.588, Sree Complex,
'D' Block, No.18, Madurai Road,
Trichy.

+1 CC to Mr.P.GANAPATHI SUBRAMANIAN, Advocate (SR-87869[F] dated 19/09/2019)

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and

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