



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.[MD]No.8209 of 2011

and

M.P.[MD]No.1 of 2011

Prasanthi Cashew Company,
Mathoor - Aruvikkara Post,
Kanyakumari District,
Through its Proprietor.

: Petitioner

Vs.

1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minor, Core - II - 4th Floor,
Lakshmi Nagar - New Delhi - 110 092.

2.The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
Bhavishyanidhi Bhavan,
NGO "B" Colony, Tirunelveli - 627 007,
Tirunelveli District.

3.The Recovery Officer,
Employees' Provident Fund Organization,
Sub-Regional Office,
66, Water Tank Road Nagercoil - 629 001.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records from the file of the first respondent herein in ATA 93(13) 2006 and to quash the order dated 20.05.2011.

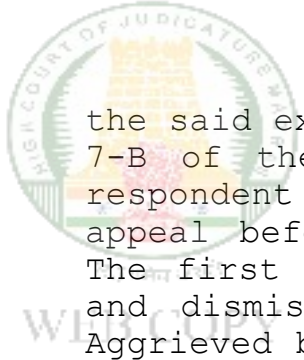
For Petitioner : Mr.P.Chandrabose

For Respondents : Mr.K.Gurunathan

O R D E R

The instant Writ Petition has been filed challenging the order dated 20.05.2011 passed by the first respondent in ATA 93(13)2006.

2.It is the case of the petitioner that he has been paying the EPF contributions for their employees regularly. According to the petitioner, the second respondent passed an ex-parte order under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, determining the money due and payable by the petitioner towards EPF contributions at Rs.4,98,200/-. Aggrieved by



the said ex-parte order, the petitioner filed a review under Section 7-B of the Act, which also came to be dismissed by the second respondent on 17.11.2005. Thereafter, the petitioner preferred an appeal before the first respondent under Section 7-I of the Act. The first respondent confirmed the order of the second respondent and dismissed the appeal filed by the petitioner on 20.05.2011. Aggrieved by the dismissal of the appeal, the instant Writ Petition has been filed.

3. Heard Mr.P.Chandrabose, learned Counsel for the petitioner and Mr.K.Gurunathan, learned Counsel for the respondents.

4. According to the petitioner, the second respondent, while determining the EPF contributions payable by the petitioner has not afforded sufficient opportunity to the petitioner to raise all objections available to them under law but instead, has passed an ex-parte order. Therefore, they filed a review under Section 7-B of the Act which also came to be dismissed on 17.11.2005. Aggrieved by the ex-parte order passed by the second respondent, the petitioner thereafter preferred an appeal under Section 7-I of the Act before the first respondent which also came to be dismissed by the first respondent by order dated 20.05.2011. According to the learned Counsel for the petitioner, except for the months of January, February and March, 2005, the petitioner is liable to pay EPF contributions, that too only for few of their employees. But, since the second respondent as well as the first respondent has not afforded sufficient opportunity to the petitioner to place all objections available to them under law, the objections could not be placed by the petitioner before the authorities below. It is also submitted by the learned Counsel for the petitioner that while obtaining an order of stay of the recovery proceedings in M.P.[MD] No.1 of 2008 in W.P.[MD]No.8145 of 2008, this Court directed the petitioner to deposit a sum of Rs.1,50,000/- before the Assistant Provident Fund Commissioner, Tirunelveli and while granting interim stay of the order of the first respondent in this Writ Petition in M.P.[MD]No.1 of 2011, this Court directed the petitioner to deposit a further sum of Rs.1,00,000/-, to the credit of the third respondent.

5. According to the learned Counsel for the petitioner, the stay conditions has been fully satisfied by the petitioner and he has deposited a total sum of Rs.2,50,000/- before the EPF authorities. Therefore, according to the learned Counsel for the petitioner, out of the total demand of Rs.4,98,200/- a sum of Rs.2,50,000/- has already been deposited before the EPF authorities without prejudice to their rights to raise all objections regarding the said demand in accordance with law.

6. Per contra, the learned Counsel for the respondents would submit that being a welfare legislation, the rights of employees are affected, if EPF contributions are not paid by employers such as the petitioner. He drew the attention of this Court to the orders



passed by the second respondent as well as the first respondent and submitted that sufficient opportunity was granted to the petitioner to raise all objections available to them under law but they failed to make use of those opportunities by submitting their objections.

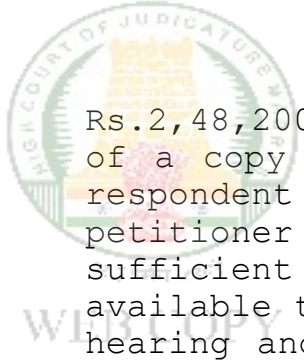
Discussion:

7. Admittedly, as seen from the order dated 17.06.2005 passed by the second respondent under Section 7-A of the Employees Provident Fund and Miscellaneous Act, 1952, it is an ex-parte order. But, in the instant case, as seen from the said order, opportunity was given to the petitioner to raise all objections and the petitioner's representative also attended the hearing on one occasion but subsequently failed to appear and only thereafter, the second respondent passed the order under Section 7-A of the Act. Thereafter, the petitioner filed a review against the order passed by the second respondent under Section 7-B of the Act. Even in the review application, the petitioner's representative did not appear for all the hearings. The review application came to be dismissed on 17.11.2005. Thereafter, an appeal was filed by the petitioner against the order passed by the second respondent on 17.11.2005, which also came to be dismissed on 20.05.2011.

8. Both the authorities below have concurrently held that the amount demanded by the respondent toward EPF contributions is payable by the petitioner but since the order passed by the second respondent is an ex-parte order under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, it is the case of the petitioners that he has not been afforded sufficient opportunity to place all his objections available to him under law.

9. This Court is of the considered view that considering the fact that the petitioner has stated that they are not liable to pay the EPF contributions as demanded by the respondents, one more opportunity can be given to the petitioner to raise all objections available to them under law before the second respondent. However, considering the fact that the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is a beneficent and welfare legislation, the amount payable to the employees towards EPF contributions will have to be fully secured. In the instant case, the petitioner has already deposited a sum of Rs.2,50,000/- towards a portion of the EPF demand without prejudice to their rights to raise all objections available to them under law, while the determination is done under Section 7-A of the Act. The balance amount payable towards EPF contributions which has got to be secured is
Rs.2,48,200/-.

10. For the foregoing reasons, in order to give one more opportunity to the petitioner to raise objections before the second respondent, the order dated 20.05.2011 passed by the first respondent confirming the order dated 17.11.2005 passed by the second respondent is hereby set aside, on condition that the petitioner deposits with the second respondent the balance amount of



Rs.2,48,200/- within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the second respondent shall determine the EPF contributions payable by the petitioner under Section 7-A of the Act, afresh after affording sufficient opportunity to the petitioner to place all objections available to them under law including granting the right of personal hearing and the second respondent shall dispose of the proceedings within a period of eight [8] weeks thereafter.

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

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minor, Core - II - 4th Floor,
Lakshmi Nagar - New Delhi - 110 092.

2. The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organization,
Bhavishyanidhi Bhavan,
NGO "B" Colony, Tirunelveli - 627 007,
Tirunelveli District.

3. The Recovery Officer,
Employees' Provident Fund Organization,
Sub-Regional Office,
66, Water Tank Road Nagercoil - 629 001.

+1cc to Mr.K.Gurunathan, Advocate, SR.No. 54212

W.P. [MD] No. 8209 of 2011
14.03.2019

MR

KK/SAR/17.05.2019/ 4P- 5C

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