

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.08.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 6794 of 2011

M/s. Kavitha Matriculation Higher Secondary
School
Pallavam, Chennai - 600 043
Represented by its Correspondent
T.Rajeswari the petitioner
name Substituted as per order
dated 16/07/2014 by SVNJ in MP.No.1/2014
in WP.No.6794/2011.

... Petitioner

-vs-

1. The Enforcement Officer
Employees Provident Fund Organization
Regional Office
No.3, Rajaji Salai
Tambaram, Chennai - 600 045.

2. Assistant Provident Fund Commissioner
Employees Provident Organization
Regional Office, Tambaram
Chennai - 600 045.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to order No. TN/RO/TBM/Enf/T-31312/2010 dated 30.07.2010 issued by the Second Respondent and quash the same as illegal, arbitrary and unconstitutional and direct the respondents herein to conduct re-enquiry in regard to assessment of EPF contribution of 10 non-teaching staff who are all on consolidated salary.

For Petitioner : Mr. A.Tamilvanan
For Respondents: Mr. K.Ramu
Standing Counsel

O R D E R
(through video conference)

Heard Mr. A.Tamilvanan, Learned Counsel for the Petitioner and Mr. K.Ramu, Learned Standing Counsel for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent by Order No. TN/RO/TBM/Enf/T-331312/2010 dated 30.07.2010 had levied penal damages against the Petitioner under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act' for short). The Petitioner was entitled to prefer appeal against that order under Section 7-I of the Act within a period of 60 days from the date of its receipt in terms of Rule 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997, before the Appellate Authority, who has been empowered to condone delay in filing such appeal for an extended period of 60 days, if sufficient cause for not preferring appeal within that period is made out. The Appellate Authority by order dated 04.03.2011 in A.T.A. No. 39(11) of 2011 refused to entertain that appeal as barred by limitation. Aggrieved thereby, the Petitioner has assailed the Order No. TN/RO/TBM/Enf/T-331312/2010 dated 30.07.2010 passed by the Second Respondent and for consequential reliefs in this Writ Petition.

3. The Hon'ble Supreme Court of India in Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) has emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India ought not to entertain Writ Petition assailing the order passed by a Statutory Authority, which was not appealed against within the maximum period of limitation before the Appellate Authority, or if the Appellate Authority has refused to entertain the appeal preferred after that time limit. When it is pointed out, that the Writ Petition cannot be entertained in view of the aforesaid legal position, Learned Counsel for the Petitioner states that the Petitioner would be satisfied if the arrears of provident fund accumulated are permitted to be remitted in 12 equated monthly installments.

4. In response to the query made, Learned Standing Counsel appearing for the Respondents has produced the Circular No. RRC/28(23)06/BIFR/23781 dated 11.02.2014 and the Circular

No. RRC/28(23)06/BIFR/3345 dated 12.05.2014 issued by the Central Provident Fund Commissioner, containing the instructions approved by the Central Board of Trustees of the Employees Provident Fund Organisation in their earlier meetings to permit the arrears of provident fund dues accumulated to be remitted in monthly installments.

5. Learned Counsel for the Petitioner states that the Petitioner has submitted a representation dated 27.07.2020 for availing the said benefit of remitting the arrears of provident fund accumulated in 12 equated monthly installments. and has produced copy of the same with postal acknowledgment card for its receipt.

6. Having due regard to the aforesaid submissions made, this Court without expressing any view on the correctness or entitlement of the claim made by the Petitioner, requires the Competent Authority to duly consider the aforesaid representation dated 27.07.2020 made by the Petitioner with reference to the parameters stipulated in the aforesaid circulars, and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment. Before carrying out that exercise, if the Competent Authority is of the view that the Petitioner has not satisfied the prescribed requirements or eligibility criteria for that benefit, the deficiencies in that regard shall be informed in writing to the Petitioner requiring the same to be furnished within a time frame of not less than 10 working days that may be granted for that purpose. In the event of the Competent Authority being of the opinion that the Petitioner has not satisfied the requirements even thereafter, an enquiry shall be conducted affording an opportunity of personal hearing to the Petitioner to explain its position regarding such compliance. It is made clear that resort to coercive action for recovery against the Petitioner shall be deferred till the representation is disposed in the aforesaid manner.

Accordingly, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

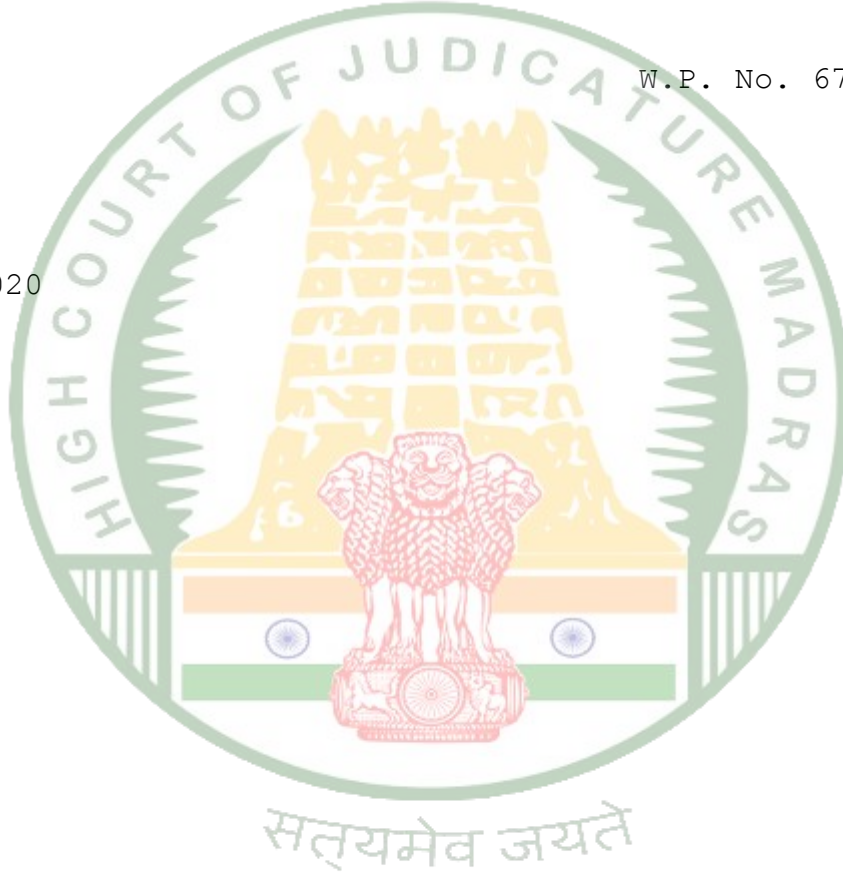
may a

To

1. The Enforcement Officer
Employees Provident Fund Organization
Regional Office
No.3, Rajaji Salai
Tambaram, Chennai - 600 045.
2. Assistant Provident Fund Commissioner
Employees Provident Organization
Regional Office, Tambaram
Chennai - 600 045.

W.P. No. 6794 of 2011

ln(co)
aa05/10/2020



WEB COPY