



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 6562 of 2018
and
W.M.P. No. 8156 of 2018

The Commissioner
Thiruvathipuram Municipality,
Thiruvathipuram - 604 407,
Thiruvannamalai District.

... Petitioner

-vs-

1. The Secretary,
Department of Ministry of Labour & Employment,
New Delhi.
2. The Central Provident Fund Commissioner
Employees' Provident Fund Organization
Bhavishya Nadhi Bhawan
14, Bhikaji Cama Place
New Delhi - 110 066.
3. The Assistant Provident Fund Commissioner,
Employment Provident Fund Organization,
Sub Regional Office,
Sathuvachari,
Vellore - 632 009.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, calling for the records of the third Respondent in No.TN/VL/92216/Enf/2017-18 dated 17.01.2018 received by the Petitioner on 12.02.2018, quash the same and consequentially forbear the Respondent from in any manner seeking to enforce the demand of the dues towards the Employees Provident Fund Contributions from the Petitioner instead of the contractors from who the same is due.



WEB COPY

For Petitioner : Mr. P.Srinivas

For Respondents: R1- Tapal due- No appearance
R2- Name printed -No appearance

M/s. V.J. Latha, (For R3)
Standing Counsel.

O R D E R
(through video conference)

Heard Mr. P.Srinivas, Learned Counsel for the Petitioner and Ms. V.J.Latha, Learned Standing Counsel appearing for the Third Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent by Order No. TN/ VL/ 92216/ Enf/ 2017-18/4088 dated 17.01.2018 had determined the contribution payable under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act' for short) by the Petitioner, who received the copy of that order on 12.02.2018. 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. However, the Petitioner did not prefer any such appeal before the Appellate Authority, but has instead filed this Writ Petition on 16.03.2018 challenging the order passed by the Third Respondent.

3. When it is pointed out that it is not possible to entertain this Writ Petition in the absence of any acceptable explanation from the Petitioner for not having availed the aforesaid alternative remedy provided under the statute, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition with liberty to the Petitioner to pursue the matter in the appeal filed before the Appellate Authority and he has filed a memo dated 01.09.2020 to that effect, which has been placed on record.

In the result, the Writ Petition is dismissed as withdrawn granting such liberty. It is made clear for the purpose of reckoning limitation for availing



aforesaid remedy, the period from the date of filing of the Writ Petition, viz., 16.03.2018, till today, viz., 01.09.2020, shall be excluded. Consequently, the connected Miscellaneous Petition is closed. No costs.

WEB COPY

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

Maya

To

1. The Secretary,
Department of Ministry of Labour & Employment,
New Delhi.
2. The Central Provident Fund Commissioner
Employees' Provident Fund Organization
Bhavishya Nadhi Bhawan
14, Bhikaji Cama Place
New Delhi - 110 066.
3. The Assistant Provident Fund Commissioner,
Employment Provident Fund Organization,
Sub Regional Office,
Sathuvachari,
Vellore - 632 009.

Copy To :

The Section Officer,
ER Section, High Court, Madras.

(Registry is directed to return the original copy of the impugned order to the Petitioner under written acknowledgment after retaining a copy of the same for record.)

+1cc to Mr.P.Srinivas, Advocate SR.No.28631

W.P. No. 6562 of 2018

LN(CO)
GMY(08/09/2020)