

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2020

CORAM

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

W.P. No. 36063 of 2015
and
W.M.P. Nos. 1 and 2 of 2015

M/s. Vivaswan Exports,
Represented by its Proprietrix V.K.Prabhalakshmi,
No. 1382, 10th Street, 18th Main Road,
Anna Nagar Western Extension,
Chennai - 600 040.

... Petitioner

-vs-

1. The Commissioner,
EPF Organisation,
No. 37, Royapettah High Road,
Chennai - 600 014.
2. The Regional Provident Fund Commissioner,
Rep. by Nilendumishra,
EPFO Sub-Regional Office,
R-40 A, TNHB Office cum Shopping Complex,
Mugappair Road, Mugappair,
Chennai - 600 037.
3. The Enforcement Officer,
Rep. by L.Mangaiyarkarasi,
EPFO Sub-Regional Office,
R-40 A, TNHB Office cum Shopping Complex,
Mugappair Road,
Mugappair,
Chennai - 600 037.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to quash the order passed by the Second Respondent levying damages under Section 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, vide proceedings No. TN/SRO/AMB/36157/PDC/203/2015 dated 20.10.2015 on the ground of it being illegal, arbitrary, violative of enquiry procedures, principles of natural justice, and consequently

direct the Respondents to conduct fresh enquiry by recording Petitioner's submissions and furnishing him a copy of the enquiry proceedings.

For Petitioner : Mr. SP.Srinivasan

For Respondents: Mr. J.Sathyanarayanaprasad,
Standing Counsel

O R D E R
(through video conference)

Heard SP.Srinivasan, Learned Counsel for the Petitioner and Mr. J.Sathyanarayanaprasad, Learned Standing Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent by order No. TN/SRO/AMB/36157/PDC/203/2015 dated 20.10.2015 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. However, the Petitioner did not prefer any such appeal before the Appellate Authority, but has instead filed this Writ Petition on 04.11.2015 challenging that order passed by the Second Respondent.

3. There is no acceptable explanation from the Petitioner either in the affidavit filed in support of the Writ Petition or during the course of arguments by the Learned Counsel for the Petitioner for not having resorted to that alternative remedy provided under the statute. In this context, it may be recapitulated here that the Hon'ble Supreme Court of India in Assistant Collector of Central Excise -vs- Dunlop India Limited [(1985) 1 SCC 260] has explained the legal position relating to the exercise of discretionary powers under writ jurisdiction as follows:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance

where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

As such, it is not possible to entertain this Writ Petition challenging the impugned order. Though obvious, it is clarified that no view has been expressed by this Court on the correctness or otherwise on the merits of the contentions raised by the Petitioner in the Writ Petition.

4. In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vjt/dm

To

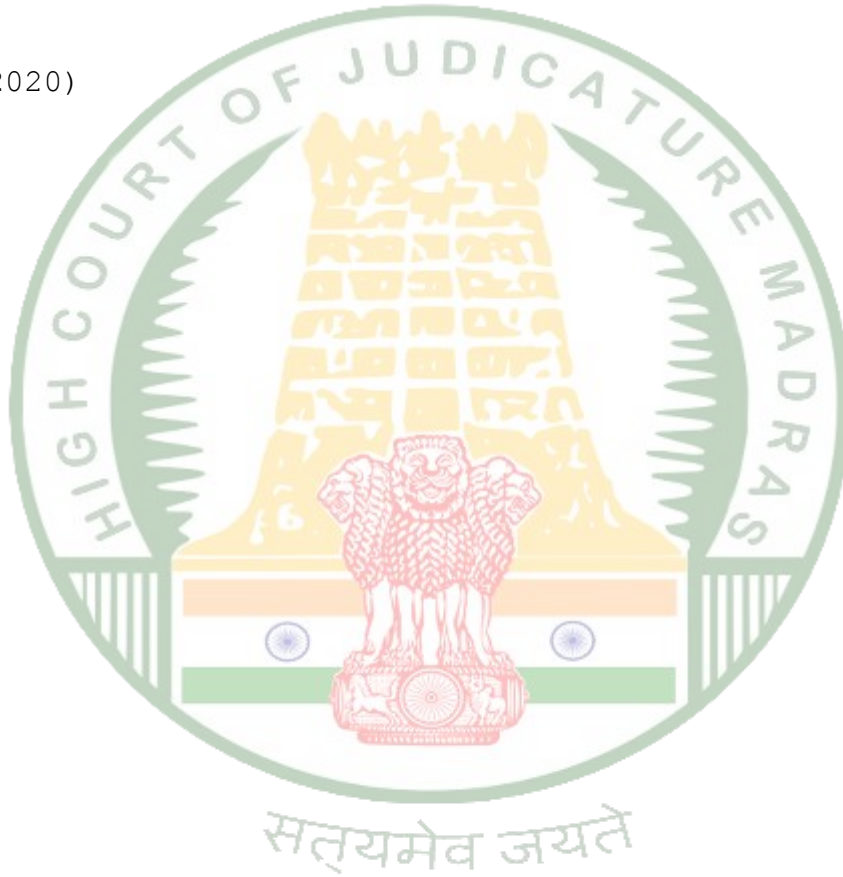
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+1cc to Mr.S.P.Srinivasan, Advocate, S.R.No. 32525

W.P. No. 36063 of 2015

NRJK (CO)
GN(08/10/2020)



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