

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2020

CORAM

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

W.P. No. 11318 of 2020
and
W.M.P. Nos. 13798 and 13801 of 2020

M/s. Murugaiyan Model Memorial High School,
Rep. by the Correspondent S.Karthikeyan,
Manalurpet Road,
Kizhanaikattu Village,
Tiruvannamalai Taluk and District.Petitioner

-vs-

1. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, S1, TNHB, Phase III,
Sathuvachari,
Vellore - 632 009.

2. The Recovery Officer,
Employees Provident Fund Organisation,
Regional Office, S1, TNHB,
Sathuvachari,
Vellore.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records in proceedings No. TB/VI.R./ DIV-
VI/74380/8F/PDC/2019 dated 18.02.2020 on the file of the First
Respondent and quash the same.

For Petitioner : Mr. R.Dilli Kumar

For Respondents : Mrs. V.J. Latha

O R D E R
(through video conference)

Heard Mr. R.Dilli Kumar, Learned Counsel for the Petitioner and Mrs. V.J.Latha, Learned Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. It was pointed out by the Learned Counsel appearing for the Respondents that the Order No. TB/VLR/DIV-VI/74380/8F/PDC/2019 dated 18.02.2020 passed by the First Respondent, which is impugned in this Writ Petition, is a consequential order in furtherance to the Order No. TB/VLR/ 74380/SDC/2019-20/2652 dated 28.06.2019 passed by the First Respondent assessing the amount of contribution payable by the Petitioner under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act' for short) and in the absence of any challenge to that parental order, the Petitioner cannot prosecute this Writ Petition for the relief claimed. In response thereto, Learned Counsel for the Petitioner contended that the aforesaid parental order had not been served to the Petitioner at any point of time earlier. Thereafter, on verification of records that there is no proof available in that regard, Learned Standing Counsel appearing for the Respondents has handed over a copy of the aforesaid Order No. TB/VLR/74380/SDC/2019-20/2652 dated 28.06.2019 to the Learned Counsel for the Petitioner today (07.09.2020) under written acknowledgment. In view of the dictum laid down by the Hon'ble Supreme Court of India in Collector of Central Excise, Madras -vs- M/s. M.M. Rubber and Co., Tamil Nadu [(1992) Supp (1) SCC 471], the said Order No. TB/VLR/74380/SDC/2019-20/2652 dated 28.06.2019 shall be treated as delivered to the Petitioner today (07.09.2020) for the purpose of reckoning limitation to challenge that order in appropriate legal proceedings. It is represented by the Learned Counsel for the Petitioner that the Petitioner would prefer appeal against the Order No. TB/VLR/74380/SDC/2019-20/2652 dated 28.06.2019 under Section 7-I before the Appellate Authority and he has filed a memo dated 07.09.2020 to that effect through e-mail, which is placed on record.

3. Since the impugned order for recovery has been issued without factually ascertaining as to whether the order determining the amount liable to be paid under Section 7-A of the Act, has been delivered to the Petitioner, it is not possible to sustain the same and it is accordingly set aside. Though obvious, it is made clear that the respective parties may work out their further rights following the prescribed procedure in the manner recognized by law and that no view has been expressed by this Court in that regard.

4. In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vjt/dm

To

1. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, S1, TNHB, Phase III,
Sathuvachari,
Vellore - 632 009.
2. The Recovery Officer,
Employees Provident Fund Organisation,
Regional Office, S1, TNHB,
Sathuvachari,
Vellore.

Copy to

1. M/s. Murugaiyan Model Memorial High School,
Rep. by the Correspondent S.Karthikeyan,
Manalurpet Road,
Kizhanaikattu Village,
Tiruvannamalai Taluk and District.
2. The Presiding Officer,
Central Government Industrial Tribunal cum Labour Court,
Shastri Bhawan, 1st Floor, 'B' Wing,
No. 26, Haddows Road,
Chennai - 600 006.

+1cc to Mr.R.Rajarajan, Advocate, S.R.No.29352

W.P. No. 11318 of 2020

NRL(CO)
KKV/17/09/2020