

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

CORAM

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

W.P. No. 14476 of 2019
and
W.M.P. No. 14488 of 2019

M/s.Fresco Juices Private Limited
New No.AH-11 (Old No: AH-216)
2nd Street, Shanthi Colony
Anna Nagar, Chennai - 600 040.

...Petitioner

-vs-

1. Assistant Provident Fund Commissioner
Employees' Provident Fund Organization
SRO, Ambattur
TNHB Shopping-cum-Office Complex
Chennai - 600 037.

2. Capricorn Foods Private Limited
Survey No.652, Kalguddapatti Village
Bannihalli Post, Kaveripatnam Block
Krishnagiri District, Tamil Nadu 635 106

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records from the First Respondent in Proceedings No.TN/RO-AMB/CC-II/A-9/1678011/2019 dated 16.04.2019 passed under Section 7A of the EPF Act and quash the same.

For Petitioner : Mr. Srinath Sridevan
For Respondents : Mr. J.Sathyanarayanaprasad
Standing Counsel

WEB COPY
O R D E R
(through video conference)

Heard Mr. Srinath Sridevan, Learned Counsel for Petitioner and Mr. J.Sathyanarayanaprasad, Learned Counsel appearing for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent by Order No. TN/ RO-AMB/ CC-II/ A-9/ 1678011/2019 dated 16.04.2019 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 30.04.2019. 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 14.05.2019 challenging the order passed by the First Respondent.

3. When it was pointed out during the hearing on 04.08.2020 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 requested that matter may be adjourned so that the Petitioner would file appeal before the Appellate Authority in the meanwhile. It is reported today by the Learned Counsel for the Petitioner that the Petitioner has filed the appeal on 10.08.2020 before the Registry of the Central Government Industrial Tribunal cum Labour Court, which is the Appellate Authority, and proof in the prescribed form has been produced for the same.

4. In the aforesaid circumstances, 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. He has filed a memo dated 13.08.2020 to that effect, which has been placed on record.

5. Accordingly, the Writ Petition is dismissed as withdrawn granting such liberty with the following clarifications:

- (i) that the amounts so far remitted by the Petitioner with the First Respondent towards the provident fund dues claimed in the impugned order including what has been paid as condition for grant of interim order in this Writ Petition, shall be taken into account for the purpose of computing the amount of pre-deposit required to be made with the Appellate Authority for entertaining the appeal filed by the Petitioner;

- (ii) that for the purpose of reckoning limitation for availing the statutory remedy, the period from the date of filing of the Writ Petition, viz., 14.05.2019, till today, viz., 14.08.2020, shall be excluded;
- (iii) that the Appellate Authority is not precluded from passing any order, interim or final, that it may deem fit and proper in accordance with law following the prescribed procedure after hearing the concerned parties; and
- (iv) that the First Respondent shall await the orders to be passed in the application for waiver of pre-deposit/interim stay of the order impugned in the appeal by the Appellate Authority, and shall not take any coercive measures against the Petitioner for recovery of the amounts due under the order impugned in that appeal, till the orders thereon are communicated to the parties.

Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Maya

To

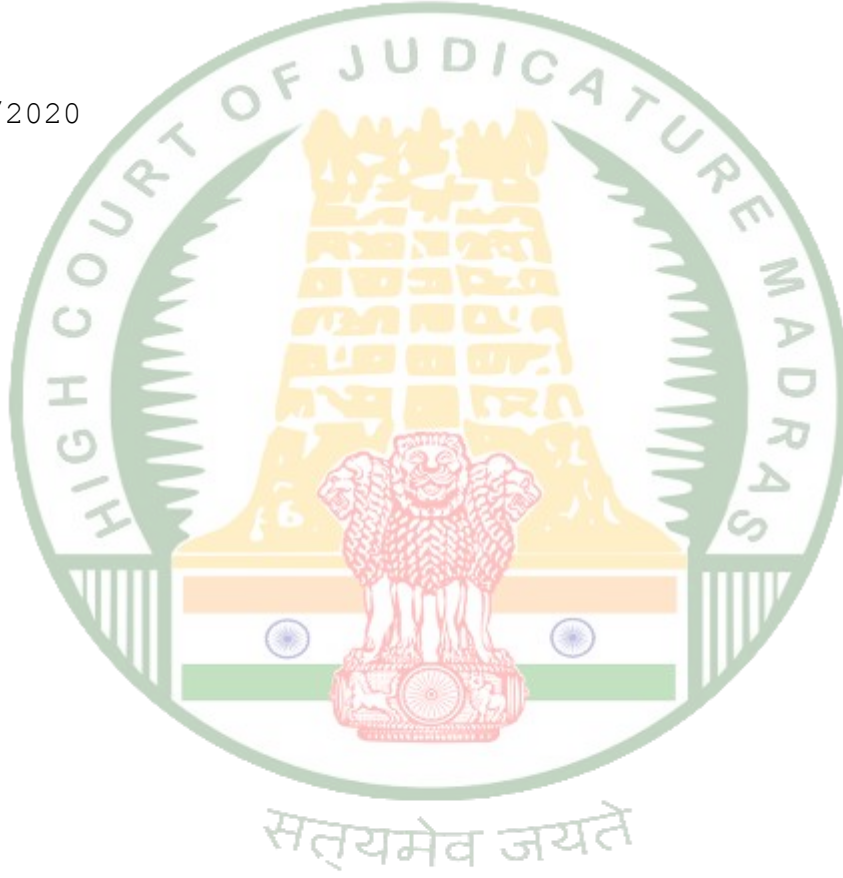
1. The Assistant Provident Fund Commissioner
Employees' Provident Fund Organization
SRO, Ambattur
TNHB Shopping-cum-Office Complex
Chennai - 600 037.
2. Capricorn Foods Private Limited
Survey No.652, Kalguddapatti Village
Bannihalli Post, Kaveripatnam Block
Krishnagiri District, Tamil Nadu 635 106.
3. The Section Officer,
ER Section,
High Court, Madras.

Copy to

The Presiding Officer,
Central Government Industrial Tribunal -cum- Labour Court,
1st Floor, B-wing, 26 Haddows Road,
Shastri Bhawan, Chennai - 600 006.

W.P. No. 14476 of 2019

RV (CO)
KKV/02/09/2020



WEB COPY