

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2020

CORAM

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

**Review Application No. 114 of 2020
and
W.M.P. No. 19910 of 2020
in
W.P. No. 11318 of 2020**

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, Phase III,
Sathuvachari,
Vellore – 632 009.
- ... Review Applicants/Respondents

-VS-

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

... Respondent/Petitioner

Prayer:- Review Application filed under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure, 1908, praying to review the order passed in W.P. No. 11318 of 2020 dated 07.09.2020.

For Petitioners : Mrs. V.J.Latha, Standing Counsel

For Respondent : Mr. R.Dillikumar

ORDER
(through video conference)

The parties are hereinafter referred to as the description in W.P. No. 11318 of 2020 for the sake of convenience.

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

3. This Court had disposed the aforesaid Writ Petition in W.P. No. 11318 of 2020 by an order dated 07.09.2020, which is extracted below:-

"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."*

4. In this Review Application filed by the Respondents, it is brought to notice that the Order No. TB/VLR/74380/SDC/2019-20/2652 dated 28.06.2019 passed under Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act' for short) had been delivered on 04.07.2019 to the Petitioner as per information received on 14.09.2020 from the Sub-Post Master, Sri Ramanashramam, after this Court had on 07.09.2020 disposed that Writ Petition. If the Petitioner had been aggrieved by that order passed by the First Respondent, it ought to have filed appeal under Section 7-I of the Act within 60 days from the date of its

receipt 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 the appeal within that period is made out. It is contended on the said premise relying on the decision of 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) that the Petitioner cannot now prefer any appeal under Section 7-I of the Act before the Appellate Authority inasmuch as the maximum time period of 120 days for filing such appeal had already elapsed. Learned Counsel for the Petitioner, who took notice in this Review Application on 11.11.2020, has not been able to refute the aforesaid well-founded contention raised by the Respondents. In view of the said material evidence which has been produced, the order dated 07.09.2020 in W.P. No. 11318 of 2020 has to be recalled in entirety, which would necessarily imply that the Petitioner cannot prefer any appeal before the Appellate Authority against the Order No. TB/VLR/74380/SDC/2019-20/2652 dated 28.06.2019 using the second copy that had been delivered on 07.09.2020 to the Petitioner. Inasmuch as no appeal had been preferred under Section 7-I of the Act by the Petitioner against that order with the first copy within the maximum period of 120 days from the date of its receipt, the determination of the provident fund dues has attained finality and

the proceedings No. TB/VI.R./DIV-VI/74380/8F/ PDC/2019 dated 18.02.2020 for consequential recovery, which has been challenged in W.P. No. 11318 of 2020, cannot be interdicted. Learned Counsel for the Respondents cites the decisions of the Hon'ble Supreme Court of India in *P.Chitharanja Menon -vs- A.Balakrishnan* [(1977) 3 SCC 255] and *Amarjeet Singh -vs- Devi Ratan* [(2010) 1 SCC 417] to buttress that proposition of law. This would certainly mean that the said order for recovery shall stand revived and the Respondents shall not be precluded from proceeding further in that regard in the manner recognized by law.

5. In the upshot, the Review Application in Rev. Aplw. No. 114 of 2020 is allowed and the Writ Petition in W.P. No. 11318 of 2020 is dismissed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

Note: Issue order copy by 21.12.2020.

To

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P.D. AUDIKESAVALU, J.

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