BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD) No.21415 of 2015

and

M.P.(MD).No.1 of 2015

G.Ayyachamy ... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam High Road,
Chennai - 600 034.

2.Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Thiruvendram Road,
Palayamkottai,
Tirunelveli - 627 002.

3.The Deputy Commissioner/Executive Officer,
Sri Sankara Narayanan Swamy Temple,
Sankarankovil - 627 756.

4.The Assistant P.F. Commissioner,
O/o. E.P.F. Organizations,
Bhavisya Nidhi Bhawan,
NGO 'B' Colony,
Tirunelveli - 627 007. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings ROC.No.13/2012/A3, dated 02.06.2015 and dated 10.06.2015 and the impugned order passed by the 1st respondent in his proceedings ROC.No.44538/2015/I-1, dated 20.10.2015 and quash the same and consequently direct the 3rd respondent to disburse the petitioner's contributory provident fund amount in full with 18% interest per annum from the date of retirement of the petitioner to the date of actual disbursement.

For petitioner : Mr.C.Jeganathan,
for M/s.Veera Associates

For respondents 1, 2 & 4 : No appearance

For 3rd respondent : Mr.M.P.Senthil

ORDER

This Writ Petition has been filed by the petitioner challenging the order of recovery, order effecting recovery and confirming the order of recovery and for a consequential direction to the 3rd respondent to disburse his Contributory Provident Fund amount with 18% interest per annum from the date of retirement of the petitioner to till the date of actual disbursement.

2. The learned counsel for the petitioner submitted that the petitioner joined as Junior Assistant in the third respondent Office on 21.09.1972 and promoted as Accountant. After serving about 39 years, he retired from service on attaining the age of superannuation on 28.02.2011. Since the Contributory Provident Fund (CPF) and Employees Provident Fund (EPF) amount had not been remitted, the petitioner has filed W.P.(MD).No.19292 of 2014 and this Court, by order dated 09.03.2015, directed the Commissioner for Provident Fund to consider the representation of the petitioner and to pass orders within a stipulated time. The Commissioner of Provident Fund remitted the CPF amount. But, the 3rd respondent herein has passed an order dated 02.06.2015, without any notice, against the petitioner and four others, fixing responsibility for the delay in remitting the EPF amount to the account of the 4th respondent and directing them to reimburse the interest/penalty of Rs.77,643/- imposed on the 3rd respondent by the 4th respondent for such delay, within a period of seven days. By order dated 10.06.2015, the 3rd respondent has recovered the amount payable by the petitioner from CPF amount payable to the petitioner and sent a cheque for the balance amount payable to the petitioner. The petitioner has received the order dated 02.06.2015 only on 10.06.2015 along with deduction order dated 10.06.2015. Aggrieved by the order of recovery, the petitioner preferred an appeal before the first respondent.

3. The learned counsel for the petitioner would further submit that as there was no response to the appeal, the petitioner has filed W.P.(MD).No.12979 of 2015 and by order dated 24.07.2015, this Court directed the first respondent to pass order on the appeal within a stipulated time. After conducting an enquiry, the first respondent, by order dated 20.10.2015, remitted the matter to the file of the third respondent stating that all the officials worked during the relevant period are responsible to reimburse the loss and instructed the third respondent to recover amount according to their official capacity and responsibility after following due procedure and issue of notice to all concerned. Challenging the said orders, the petitioner has filed this writ petition.

4. The learned counsel for the petitioner would further submit that the third respondent has passed the order of recovery

and effected recovery without issuing any notice to the petitioner, that too after a lapse of four years from the date of retirement of the petitioner and therefore, the orders passed by the third respondent are liable to be set aside on the ground of violation of principles of natural justice. He would further submit that in the instructions issued by the first respondent dated 20.02.2006, the first respondent himself stated that the loss amount for delay in remitting EPF amount will be recovered from the Executive Officer / Takkar (Fit person), etc. and not the petitioner. Therefore, the order passed by the first respondent is contrary to his own instructions dated 20.02.2006 and therefore, the impugned order passed by the third respondent may be set aside. Thus, he prayed to allow this writ petition.

5. The learned counsel appearing for the third respondent submit that during the relevant time, the petitioner was in charge of establishment and it was his responsibility to remit the dues without any delay. Having failed to discharge his duty, now he cannot contend that there is no fault on him. The petitioner cannot now put responsibility on the higher officials, who had been loaded with various other responsibilities. However, the third respondent has fixed responsibility not only on the petitioner but also on the some of the officials worked during the relevant period and ordered for recovery and recovered amount of the petitioner from the amount payable to him. Thus, he prayed to dismiss this writ petition.

6. Heard the learned counsel for both sides and perused the records carefully.

7. Admittedly, it is not a case of misappropriation or withholding of the amount to be remitted by the petitioner. The EPF amounts which had been deducted in the salary of the petitioner and other staff during the relevant period ie., March 2006 to October 2013 were remitted to the account of the 4th respondent belatedly, for which the 4th respondent has imposed a sum of Rs.77,643/- as penalty for loss of interest on the 3rd respondent. The 3rd respondent has in turn ordered for recovery and recovered some amount from the EPF amount payable to the petitioner. It is seen that the third respondent has passed the order of recovery dated 02.06.2015 and the order effecting recovery dated 10.06.2015, without issuing notice or without providing any opportunity to the petitioner and in violation of principles of natural justice. Therefore, the said orders are liable to be set aside.

8. As rightly stated by the petitioner, in the instructions issued by the first respondent in Na.Ka.No.22130/2001-1/I-1, dated 20.02.2006, it is clearly stated that if any penal amount for additional interest imposes under Employees Provident Fund Act for

the delay in remitting the amount, the Executive Officer / Takkar, etc. will have to take responsibility for the same individually. But, contrary to the above instructions, the first respondent himself has stated in his order dated 20.10.2015 that the petitioner and other employees those who worked at the relevant point of time are responsible for the delay and therefore, the recovery made by the 3rd respondent is correct and further instructed to recover loss amount from employees according to official capacity/responsibility. As the order of the first respondent is contrary to his own instructions, the impugned order passed by the third respondent is also liable to be set aside.

9. Though it is stated by the 3rd respondent that due to the failure of the petitioner while discharge his duty the amount due to the 4th respondent has not been remitted in time, the petitioner has already retired from service and after four years, the impugned order of recovery has been passed that too without any notice. The Hon'ble Supreme Court also in the decision in **State of Jharkhand and others Vs. Jitendra Kumar Srivastava**, reported in **(2013) 12 SCC 210**, has held that the retirement benefits of an employee are not bounty but property and withholding of such benefits, without due process of law, is violative of Article 300 (A) of the Constitution of India. More over, the fact remains that the amounts deducted in the salary of the petitioner and other employees for remittance of EPF amount were only kept in the account of the 3rd respondent, by which it could have gained interest. Therefore, viewing from any angle, the impugned orders are liable to be set aside in respect of the petitioner.

10. In view of the above, all the impugned orders are set aside in respect of the petitioner and the third respondent is directed to repay the recovered amount with interest at the rate of 7.5% p.a. from the date of retirement till the date of realisation, within a period of four weeks from the date of receipt of a copy of this order.

11. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To
1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam High Road,
Chennai - 600 034.

2.Joint Commissioner,
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Sri Sankara Narayanan Swamy Temple,
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4.The Assistant P.F. Commissioner,
O/o. E.P.F. Organizations,
Bhavisya Nidhi Bhawan,
NGO 'B' Colony,
Tirunelveli - 627 007.

+1 CC to MR.M.P.SENTHIL, Advocate (SR-2115[F] dated 21/01/2020)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-2174[F] dated 21/01/2020)

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