BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.07.2020

CORAM :

THE HONOURABLE **MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD).No.411 of 2017
and
W.M.P(MD) Nos.2879, 327 and 328 of 2017

DD.576, Kalanchipatti Primary
Agricultural Co-operative Bank,
rep. through its Secretary,
Kalanchipattim,
Oddanchatram Taluk,
Dindigul District. ... Petitioner

Vs.

The Assistant Provident Fund Commissioner
Regional Office No.1,
Lady Doak College Road,
Chokkikulam,
Madurai-625 002. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondent to hear the petition dated 23.09.2016 filed by the petitioner to reopen the deemed ex-parte order passed in No.TN/RO/MDU/24365/M13/PDC/7Q/2016 dated 24.10.2016 and No.TN/RO/MDU/24365/M13/PDC/LD/2016 dated 24.10.2016.

For Petitioner : Mr.V.O.S.Kalaiselvam
For Respondent : Mr.V.S.V.Venkateshvaran

ORDER

Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondent.

2.The petitioner is an assessee under the respondent Corporation. The petitioner received a notice in July-2016 proposing levy of interest and damages under Section 7Q and Section 14B of the 'Employees Provident Funds Act and Miscellaneous Provisions Act, 1952' (hereinafter referred to as 'Act'). The petitioner appeared before the respondent. At his instance, the proceedings were adjourned. The Secretary of the petitioner's society one R.Ayyavu had appeared on more than one occasion. But, finally impugned order dated 24.10.2016 came to be passed directing the petitioner to pay a sum of Rs.1,09,966/- (Rupees One Lakh Nine Thousand Nine Hundred and Sixty Six only) towards interest and Rs.2,76,643/- (Rupees Two Lakhs Seventy Six Thousand Six Hundred and Forty Three only) towards damages. This order was passed on 24.10.2016. The petitioner, thereafter, filed a petition seeking a review of the said order. In order to direct the respondent to reopen the proceedings, this writ petition came to be filed.

3.When the matter was taken up for hearing, the learned Standing Counsel drew my attention to quite a few aspects and he reiterated all the contentions set out in the counter affidavit filed by the respondent. He would point out that when the matter was listed for admission, an interim order was passed and the petitioner has not complied with the conditions imposed in the interim order. He, therefore, wanted this Court to non-suit the petitioner by citing his conduct. He would also point out that the liability under Section 7Q of the Act cannot be questioned. He wanted this Court to dismiss this writ petition as not maintainable.

4.I must straight away uphold the objections raised by the learned Standing counsel, which is to the effect that the levy of interest under Section 7Q of the Act cannot be assailed. Infact, the petitioner's counsel also fairly concedes that levy of interest under Section 7Q of the Act is a matter of course. Therefore, the respondent cannot be directed to review his order in respect of the levy of interest under Section 7Q of the Act. But then the respondent will have to necessarily revisit his earlier order in respect of the levy of damages. Damages under Section 14B of the Act can be levied only if there is *mens rea* on the part of the establishment.

5.But, in this case, even after going through the impugned order, I am not able to discern any such element attributed to the petitioner/assessee. In any event, the petitioner's counsel has substantiated that when a request for adjournment was made and the same was also received, ignoring the same, the order appears to have been passed. Therefore, the respondent has to necessarily review his earlier order dated 24.10.2016 on merits after enquiring the petitioner, ofcourse, only in respect levy of damages alone. There is no question of reviewing the levy of payment of interest. The petitioner can ask for review, only if he pays the interest component. Without complying with this obligation to pay the interest component under Section 7Q of the Act, the petitioner will not be justified in asking for a review of the order levying damages.

6.The petitioner's counsel states that the petitioner will remit the payment under Section 7Q of the Act to the respondent within a period of six weeks from the date of receipt of a copy of this order. Upon such payment, the respondent will issue enquiry notice to the petitioner and thereafter, review his earlier order dated 24.10.2016, insofar as Section 14B of the Act is concerned on merits and in accordance with law.

7.With the above directions, the Writ Petition is partly allowed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Assistant Provident Fund Commissioner
Regional Office No.1,
Lady Doak College Road,
Chokkikulam,
Madurai-625 002.

W.P(MD).No.411 of 2017
10.07.2020

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