



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.5149 of 2017

and

W.M.P. (MD)No.4148 of 2017

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M/s.While Memorial Homeo Medical College,
Attoor,
Veeyannoor Post-629 177,
Kanyakumari District,
Rep. by its Principal,
Dr.T.R.Leelabai

... Petitioner

Vs.

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub Regional Office,
No.66, Water Tank Road,
Nagercoil-629 001,
Kanyakumari District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of the respondent herein, dated 22.02.2017, made in No.TN/NGL/29666/14B/187/PDC/2017 and quash the same.

For Petitioner	:	Mr.R.Vijayakumar
For Respondent	:	Mr.K.Gurunathan
		Standing Counsel

O R D E R

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

2.The petitioner is an establishment falling within the purview of the Employees Provident Fund and Miscellaneous Provisions Act 1952. The respondent had levied damages on the petitioner under Section 14-B of the Act. Questioning the same, this writ petition has been filed.

3.The petitioner's counsel pointed out that the respondent had nowhere given a finding as regards *mensrea* on the part of the petitioner. He placed reliance on the recent decision rendered by the Hon'ble First Bench in W.A.(MD)No.516 of 2012, dated 16.12.2019. The Hon'ble First Bench, after referring to the decision of the Hon'ble Supreme Court reported in 2014 (15) SCC 263 [*McLeod Russal India Vs. RPF Commissioner*], held that *mensrea* is an essential



element and if there is no finding in that record, the order levying damages under Section 14-B will have to be set aside. Respectfully, following the order passed by the Hon'ble First Bench, I have no hesitation to quash the order impugned in the writ petition.

4. However, the learned Standing Counsel for the respondent submitted that this Court will have to necessarily remand the matter as done by the Hon'ble First Bench in the aforesaid mentioned case. I must express my concurrence with the said request. Therefore, even while quashing the order impugned in the writ petition, the matter is remitted to the respondent to once again consider the issue of *mensrea* before levying damages.

5. The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sjj

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,
Employees Provident Fund Organization,
Sub Regional Office,
No.66, Water Tank Road,
Nagercoil-629 001,
Kanyakumari District.

+1 CC to M/s.R. VIJAYAKUMAR, Advocate (SR-13342[F]
dated 30/07/2020)

+1 CC to M/s.K. GURUNATHAN, Advocate (SR-13338[F]
dated 30/07/2020)

W.P.(MD)No.5149 of 2017

29.07.2020