



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.1295 of 2017

and

W.M.P. (MD) .Nos.1077 & 1078 of 2017

Virudhunagar Municipality,
represented by its Commissioner,
Virudhunagar,
Virudhunagar District.

... Petitioner

Vs.

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

2.The Enforcement Officer,
EPF Organisation, M-03, Division,
Regional Office, Post Box No.1,
Lady Doak College Road,
Chokkikulam, Madurai-625 002.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent herein in his proceedings in File No.MD/MDU.91177/Enf C/ Circle-17/M-7/17009/2016, dated 08.10.2016 and consequential order passed by the first respondent herein in No.M1/MD/MDU/91177/ENF-C/8F000/2016, dated 03.11.2016 and quash the same.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.Murali Shankar
Standing Counsel

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Standing counsel appearing for the respondents / Employees' Provident Fund Organisation.



2. The writ petitioner is a Municipality. The writ petitioner is running an Establishment known as Amma Unavagam. It is a welfare scheme announced by the Government of Tamil Nadu. It caters to the food security requirements of the economically poor. The writ petitioner is aggrieved by the impugned order, whereby, even those employees working in Amma Unavagam have been brought within the purview of provident fund coverage. The first respondent had issued an order under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, assessing the liability of the writ petitioner Municipality at Rs.7,62,014/-. Questioning the same, this Writ Petition has been filed.

3. The respondents have also filed their counter affidavit.

4. At the outset, I posed a question to the writ petitioner's counsel as to why he had not availed the alternative remedy of appeal before the Tribunal. In fact, the writ petitioner can also file a review before the very same Authority, if there is any apparent mistake. The petitioner's counsel submitted that he questions the very applicability of the Act to the Amma Unavagam run by the writ petitioner. The contention with regard to the applicability of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, in respect of Amma Unavagam is centered on the circular bearing Na.Ka.No.1819/2015.L3-1, dated 18.11.2016 issued by the Commissioner of Municipal Administration, Chempauk. It is not in dispute that the employees of Amma Unavagam are being paid out of the Municipal funds. The writ petitioner's contention is that in one Amma Unavagam unit, there would be a maximum number of six employees. It is not in dispute that the writ petitioner Municipality is running more than five such Amma Unavagam Centres. The writ petitioner is not right in expecting the respondents to consider each Amma Unavagam Unit as an independent or stand-alone unit. In fact, the coverage will be determined only with reference to the total number of employees run by the Establishment in question. In the case on hand, Virudhunagar Municipality will be considered as an Establishment. Amma Unavagam Centre will not be considered as an independent or stand-alone Establishment. Therefore, the contention urged by the writ petitioner's counsel in this regard is totally misconceived.

5. The writ petitioner's counsel would further contend that some of the employees are only seasonally or occasionally employed and that therefore, the computation made by the respondents in this regard is incorrect.

6. The learned Standing counsel appearing for the respondents would draw my attention to Section 2 (f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, which defines an employee as follows:-

"2.(f). "employee" means any person who is employed for wages in any kind of work, manual or



otherwise, in or in connection with the work of [an establishment, and who gets, his wages directly or indirectly from the employer [and includes any person-

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;]"

7. This definition had been interpreted in more than one decision of this Court and it has been interpreted to include even a seasonal employee. Therefore, I do not find any ground to sustain either of the contentions urged by the learned counsel appearing for the writ petitioner. However, if there is any arithmetical or clerical error in the impugned order, it is always open to the writ petitioner herein to apply for review before the first respondent. If such review petition is filed within a period of 60 days from the date of receipt of a copy of this order, the same will be entertained by the first respondent and considered on merits without any reference to limitation.

8. With this liberty, this Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// 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.

+1 CC to M/s.K.MURALISANKAR, Advocate (SR-13224[F] dated 24/07/2020

ORDER MADE IN

W.P. (MD) .No.1295 of 2017

24.07.2020

tsg

SDS (03.08.2020) 3P-2C
<https://hcservices.ecourts.gov.in/hcservices/>