IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MS.JUSTICE R.N.MANJULA

W.A.NO.355 OF 2020
AND
C.M.P.NO.5969 OF 2020

The Managing Director,
M/s.A&F Overseas Trade Limited,
Uruvaiyar Village, Mangalam Road,
Mangalam Post (Vila Villianur),
Pondicherry - 605 110 ... Appellant/Petitioner

.Vs.

1. The Regional Provident Fund Commissioner,
   The Employees' Provident Fund Organization,
   The Sub-Regional Office,
   No.101, 100 Feet Road, Cholan Nagar,
   Olandai, Keerapalayam,
   Puducherry - 605 004.

2. The Assistant Provident Fund
   Commissioner (Comp),
   The Employee's Provident Fund Organization,
   The Sub-Regional Office,
   No.101, 100 Feet Road, Cholan Nagar,
   Olandai, Keerapalayam,
   Puducherry - 605 004.

3. The Secretary,
   The Ministry of Labour & Employment Department,
   The Government of India,
   Shram Shakti Bhawan,
   Rafi Marg, New Delhi - 110 001.

... Respondents/Respondents

PRAYER:-

Appeal filed under Clause 15 of Letters Patent against the order dated 06.11.2019 made in W.P.No.28363 of 2013.

Prayer in W.P.No.28363 of 2013:-

This Writ Petition is filed under Article 226 of the Constitution of India praying for Insuance of Writ of Certiorari to call for the records relating to the Orders of the 2nd respondent in proceedings No.TBM/SRO/PONDY/Recy/PC/364/2013 dated 23.09.2013 and No.TBM/SRO/PCY/PC-364/Comp/2010 dated 31.05.2010, quash the same.

For Appellant : Mr.S.Ravindran, Sr.Counsel For Mr.P.Nehru

For Respondents : Mrs.V.J.Latha For R1 and R2

Mr.Rajesh Vivekanandan for R3

JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

The present appeal has been filed against the order of the learned single Judge, who while holding that the writ petition as filed is not maintainable without exhausting the alternative remedy, nonetheless went into the merits of the case and dismissed the writ petition.

2. On 31.05.2020, the Assistant Provident Fund Commissioner viz., the second respondent passed an order under Section 7A of the Employees Provident Fund Act against the appellant. The assessment was made both for regular employees and for trainees. A review was filed under Section 7B of the Act by the appellant, which was also dismissed by the order dated 23.09.2013. The aforesaid order is reproduced hereunder:

> The assessing authority who passed the order under Section 7A was aware of the writ petition filed before the Madras High Court in W.P.No.11733 of 2004 against the assessment of the dues duly including the stipend paid to the trainees and taken into account while passing the orders.
>
> Further, it is noted that you could not discover any new and important matter or evidence and all the matters already discussed were within your knowledge. No new reasons or records were also produced for considering your present request.

It is therefore appears that no sufficient ground to entertain the application for review and hence it is hereby rejected. You are advised to remit the sum of Rs.29,57,472/- (Rupees Twenty Nine Lakh Fifty Seven Thousand Four Hundred and Seventy Two only) within 15 days of receipt of this communication.

3. Thereafter, a writ petition was filed in W.P.No.28363 of 2013 by the appellant. The learned single Judge after going into the merits exhaustively including the report submitted by the Enforcement Wing of the respondent, held that on merit, the appellant does not have a case. Incidentally, the learned single Judge also took note of the fact that no appeal has been filed. Challenging the same, the present appeal has been filed.

4. Learned counsel appearing for the appellant, placing reliance upon the order of the Division Bench in The Palliyadi Handloom Weavers' Co-operative Production and Safe Society Limited No.2489 Vs. The Assistant Provident Fund Commissioner and Others (2021 LLR 439), submitted that the learned single Judge committed an error in going into the merits of the case after holding that the writ petition is not maintainable without exhausting the alternative remedy. The order passed under Section 7A of the Act is cryptic one and the same was reiterated under review. Under Article 226 of the Constitution of India, writ petition can be maintained when an order having civil consequence does not record the reasons. The appellant does not feel shy of exhausting the alternative remedy especially when certain amount has already been paid in compliance with the interim order passed by the Court, provided further time is granted. Learned senior counsel placed reliance upon Section 14 of the Limitation Act in support of the said contention.

5. Learned counsel appearing for the respondent submitted that the provisions of Limitation Act do not apply. The learned single Judge considered the relevant materials in dismissing the writ petition. The legislation being a welfare one, any further delay would substantially affect the interest of the beneficiaries. Hence no interference is required.

6. We are of the view that the appellant deserves a chance. An appeal is to be maintained only after payment of 75% of the amount. However, the quantum of amount as aforesaid can be reduced in a given case by the appellate forum while entertaining the appeal.

7. The learned single Judge in our considered view ought not to have gone into the merits especially the orders passed under Sections 7A and 7B indicate adequate reasons. It is well settled

that in a writ of certiorari, the writ court is not expected to supplement the reasons. Similarly, an order having civil consequence has to be sustained on its own and therefore any material or affidavit subsequent to the said order under challenge will not cure the defect.

8. In such view of the matter, we are of the view that having found that the appellant has not exhausted the alternative remedy, the learned single Judge could have left the matter at that stage. We further find that Section 14 of the Limitation Act stands on a different footing than Section 5. Section 5 speaks of condonation of delay in exhausting the alternative remedy. The period fixed under the statute cannot be extended by invoking Section 5, however, it stands on a different footing. When it comes to application of Section 14, this will apply to a proceeding before the Tribunal which has got all the trappings of the Court.

9. In such view of the matter, we are inclined to interfere with the order of the learned single Judge insofar as the merits of the case is dealt with. The appellant is permitted to file an appeal within a period of four weeks from the date of receipt of a copy of this judgment, on complying with the payment of 50% of the amount demanded by the respondent/EPF, for which, due deduction granted by reducing amount paid pursuant to the orders of this Court. The amount of Rs.2,97,397/- is also liable for deduction provided the appellant satisfies the Appellate Tribunal on the said payment having been made. As and when such an appeal is filed, the same will have to be taken up and decided on merit without rejecting it on the ground of limitation. We request the Appellate Tribunal to dispose of the appeal within a period of four months from the date of receipt of a copy of this judgment and all the issues are left open to the decided in the appeal to be filed.

10. With the above observation and direction, the writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

1. The Regional Provident Fund Commissioner,
   The Employees' Provident Fund Organization,
   The Sub-Regional Office,
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3. The Secretary,
   The Ministry of Labour & Employment Department,
   The Government of India,
   Shram Shakti Bhawan,
   Rafi Marg, New Delhi - 110 001.

+1cc to Mr.P.Nehru, Advocate, S.R.No.31369
+1cc to Mrs.V.J.Latha, Advocate, S.R.No.31590

W.A.NO.355 OF 2020

RSI(CO)
PBS/10/08/2021