



W.P.No.23810 of 2021
and W.M.P.No.25077 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.23810 of 2021

M/s.Vivek Pvt. Ltd.,
Rep. by its Deputy General Manager - HR & Admin. .. Petitioner

Vs

1.The Assistant Provident Fund Commissioner
Employees Provident fund organisation,
Office of the Employees Provident Fund Commissioner
37, Royapettah High Road,
Royapettah,
Chennai - 600014.

2.The Enforcement Officer,
Chennai South
Employees Provident Fund Organisation,
Office of the Employees Provident Fund Commissioner,
37, Royapettah High Road,
Royapettah,
Chennai - 600014. .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India forbearing the respondent from insisting on the petitioner to process the claim forms and update the KYC details in Form 5 and Form 10 pursuant to the Electronic Mail, dated 28.09.2021 till such time C.C.No.391 of 2017, pending on the file of Special Court for CB CID Metro is disposed.



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For Petitioner : Mr.G.Anand
for M/s.T.S.Gopalan and Co

For Respondents : Mr.K.Ramu

ORDER

This Writ Petition has been filed forbearing the respondents from insisting on the petitioner to process the claim forms and update the KYC details in Form 5 and Form 10, pursuant to the Electronic Mail, dated 28.09.2021 till such time C.C.No.391 of 2017, pending on the file of Special Court for CB CID Metro, is disposed of.

2. The petitioner is a private limited company and has come up with the petition against the action taken by the respondent Provident Fund Organisation is the dispute pertain to the stand taken by the petitioner Company in regard to processing claim forms of its former employee for release of provident fund contribution standing to her credit. According to the petitioner company, one employee/Mrs.Sheela Anand, while working as an Executive with them, was involved in misappropriation of huge amounts of the Company, during the period of



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her employment. An F.I.R, against her and few other co-employees, was registered and the same was taken cognizance of as C.C.No.2121 of 2012 on the file of learned XI Metropolitan Magistrate, Chennai. Later, the case was transferred to the file of the Special Court for CB CID Metro and re-numbered as C.C.No.391 of 2017. The said employee is one of the main accused in the criminal case.

3. According to the petitioner, as many as 64 witnesses have been examined on the side of the prosecution and 116 exhibits have been marked. The prosecution has also completed arguments and filed written statement. The case is now adjourned for arguments on the side of accused Nos.3 to 8, as arguments in respect of accused A1 and A2 have also been completed.

4. While matter stood thus, the said employee appeared to have approached the respondent organization for settlement of her provident fund contribution. Pursuant to the same, the respondents have sent a communication calling upon the petitioner to generate the UAN number,



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linking of the Aadhar and other formalities so as to enable the said employee to receive her Provident Fund benefits. However, in response to the action initiated by the respondents, the company replied, by its letter, dated 13.10.2021 that the Company was unable to countenance the claim of the employee, as criminal case is pending and it has reached the final stage before the criminal Court. It appears that the respondents did not accept the stand of the Company and insisted complying with the legal requirements. In the said circumstances, the petitioner is before this Court.

5. Mr.G.Anand, learned counsel for the petitioner/Company has reiterated the above facts. According to him, when the criminal proceedings are pending against its former employee, for the charges of misappropriation of the Company funds, the Company felt that the employee concerned was not to be rewarded with Provident Fund benefits. According to him, the employee having been accused of misappropriating huge amounts to the tune of Rs.1.30 Crores from the Company, the question of sanctioning of provident fund amount, to the



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6. In response to the above submissions, the Court confronted the learned counsel as to how it is legally permissible for the petitioner/Company to refuse to comply with the legal requirements insisted by the respondent. At this, the learned Counsel submitted though it is legally not permissible to attach or hold back the accumulations of provident fund due to the employee concerned under any circumstances, yet, in the peculiar circumstances of the case the employee being accused of misappropriation of huge funds of the company, the company thought it may not facilitate any more from its side towards release of the provident fund amount to the accused employee.

7. This Court is unable to appreciate such specious arguments which under no circumstances can be countenanced in law. Pending criminal case against the employee per se does not prevent the employee from claiming her provident fund contribution accumulated in her



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account. Therefore, the action of the respondent in insisting the petitioner/Company to comply with the legal requirements cannot be faulted at all. As the stand of the respondent is clearly expressed in the communication, dated 13.10.2021 that “provident fund due is out-of-bounds from any Court attachment”, this Court cannot help if the petitioner/Company is morally and righteously offended, but it cannot refuse to accede to the demand of the respondents. If this Court were to grant the prayer as sought in the Writ Petition, it would be acting against the law. Under no circumstances, the present relief could be granted to the petitioner.

8. No doubt, the petitioner/Company is aggrieved by the act of its former employee, nevertheless, the grievance expressed in the affidavit cannot be redressed within the legal framework. In the said circumstances, this Court is of the view that this Writ Petition is not maintainable and liable to be dismissed.



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08.11.2021

Index : Yes/No
Speaking order : Yes/No
grs

To

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V.PARTHIBAN, J.

grs

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