



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P. (MD)No.11114 of 2010

and

M.P. (MD)Nos.1 to 3 of 2010

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M/s.Mohan Retreading Company,
35/150, Aruppukkottai Road,
Avaniapuram,
Madurai - 625 012.

Rep. by its Partner Chandra Mohan

... Petitioner

versus

1. Employees Provident Fund Appellate Tribunal,
Ministry of Labour,
Government of India,
Core-2, 4th Street, Scope Minar,
Lakshmi Nagar,
New Delhi - 110 092.
Rep. by its Registrar.

2. Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Bhavishyanidhi Bhavan,
Lady Doak College Road,
Madurai - 625 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent made in A.T.A.No.997 (13)/2005 dated 13.01.2010 and quash the same and consequently, direct the 1st respondent to hear the case A.T.A.No.997(13)/2005 on merits after affording adequate reasonable opportunity to the petitioner herein with priority hearing during its camp in any Southern Districts.

For Petitioner : Mr.S.Karthik
for M/s.Profexs Associates

For Respondents: Mr.K.Murali Sankar for R2

ORDER

This writ petition has been filed seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent made in A.T.A.No.997(13)/2005 dated 13.01.2010 and quash the same.



2. The case of the petitioner is that the petitioner is running a small Tyre re-trading unit and is covered under the Factories Act, 1948. According to the petitioner, the employees working in its company are less than 20 persons and the provisions of Section 1(3)(a) of the Employees' Provident Fund and Miscellaneous Provisions Act, will be applicable, if there are more than 20 persons are employed. While so, the respondent issued a notice dated 25.08.2005 for enquiry under Section 7(A) of the EPF Act. Since the petitioner's counsel was not in station, the petitioner requested for adjournment. However, the Assistant Provident Fund Commissioner, vide its order dated 27.10.2005, passed an order, holding that the petitioner is covered under the EPF Act and is liable to pay the contribution. Aggrieved over the same, the petitioner filed an appeal in A.T.A.No.997(13)/2005 before the first respondent and the same is pending from the year 2005. While so, the petitioner received a notice dated 15.12.2009 from the first respondent, calling upon the petitioner to appear in person or through counsel on 13.01.2010. Since the counsel was not well, the petitioner sent a letter requesting the first respondent to adjourn the matter. However, the appeal was dismissed for default on 13.01.2010. Aggrieved over the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that though the petitioner requested for adjournment stating that the counsel was not well, the first respondent, without considering the same, dismissed the appeal for default. It is further submitted that the petitioner paid 50% of the contribution and the remaining 50% of contribution has to be paid. Therefore, the order of ex parte be set aside and the matter be remitted back to the first respondent for fresh consideration.

4. Heard the learned counsel appearing for the second respondent.

5. Admittedly, the facts in the present case are not in dispute. Due to illness of the petitioner's counsel, the petitioner requested the appellate Tribunal for adjournment. However, the appellate Tribunal was dismissed the appeal for default. Pursuant to the ex parte order, the petitioner paid 50% of contribution. For the remaining 50% of contribution, it can be adjudicated before the Appellate Tribunal. Further more, the Employees' Provident Fund Appellate Tribunal is now reconstituted as Central Government Industrial Tribunal, Shastri Bhavan, Chennai. Therefore, I am inclined to restore the appeal and remit the matter back to the first respondent for adjudication.

6. Accordingly, the Writ Petition is allowed, setting aside the order dated 13.01.2010 passed by the first respondent in A.T.A.No.997(13)/2005. The appeal filed in A.T.A.No.997(13)/2005 is restored on file. The first respondent is directed to take the



appeal on file and after giving opportunity of hearing to the parties concerned, pass orders on merits and in accordance with law, as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The Registrar.
Employees Provident Fund Appellate Tribunal,
Ministry of Labour,
Government of India,
Core-2, 4th Street, Scope Minar,
Lakshmi Nagar,
New Delhi - 110 092.

2. The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Bhavishyanidhi Bhavan,
Lady Doak College Road,
Madurai - 625 001.

+1 CC to M/s.K.MURALISANKAR, Advocate (SR-13549[F] dated 25/03/2021

+1 CC to M/s.S.KARTHIK, Advocate (SR-13759[F] dated 25/03/2021)

W.P. (MD) No.11114 of 2010

24.03.2021

RK (26.04.2021) 3P 5C