BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.6810 of 2010

and

M.P.(MD)No.1 of 2010

Sivagangai District Central Cooperative Bank Ltd.,
represented by its Special Officer/
Joint Registrar,
Sivagangia-630 561,
Sivagangai District. ... Petitioner

Vs.

1.The Assistant Provident Fund Commissioner,
Employees Provident Fun Organisation,
Regional Office, Lady Doak College Road,
Chokkikulam, Madurai 625 002,
Tamil Nadu.

2.The Recovery Officer,
Office of the Recovery Officer,
Employees Provident Fund Organisation,
Regional Office, Lady Doak College Road,
Chokkikulam, Madurai. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records relating to the impugned Demand Notice issued by the second respondent vide E.P.F.C.P.1 No.TN/MDU/29759/Recy 2010530/Circle 18/2010 for recovering the damage under section 14(B) and interest under section 7(Q) of the employees Provident Fund and Miscellaneous Provisions Act and quash the same.

For Petitioner : Mr.D.Shanmugarajasethupathi

For Respondents : Mr.K.Muralishankar
Standing Counsel

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ORDER

This Writ Petition is filed seeking issuance of a writ of certiorari to call for the records relating to the impugned Demand Notice issued by the second respondent vide E.P.F.C.P.1 No.TN/MDU/29759/Recy 2010530/Circle 18/2010 for recovering the damage under section 14(B) and interest under section 7(Q) of the employees Provident Fund and Miscellaneous Provisions Act and quash the same.

2. The case of the petitioner is that the petitioner is the District Central Co-operative Bank and it is incorporated under the Tamilnadu Co-operative Societies Act and the rules made thereunder. The petitioner is also an establishment covered under the Employees Provident Fund and Miscellaneous Provisions Act (hereinafter referred as "Act"). The Assistant Provident Fund Commissioner has issued a letter dated 26.11.202 stating that the petitioner has given the membership for EPF contribution upto A/c No.TN/29769/44, but the Bank has remitted the EPS(Employees Pension Scheme) contribution upto A/c No.TN/29769/217 only. The Bank was requested to remit the EPS contribution in respect of remaining 27 employees. Subsequently the Bank has remitted the pension fund contribution for 17 members, out of 27 members, since the remaining 10 members have already attained the age of superannuation. Thereafter, the Bank has sent letters to all the above 10 members, who already retired from services, requesting them to give their willingness and pay the pension fund contribution payable by the employees. Inspite of various remainders, the concerned employees have not responded and they had not come forward to pay their respective contributions. After long persuasion, one Krishnasamy has only come forward to remit his contribution. Thereafter a proposal was sent on behalf of the said Krishnasamy to the first respondent and the concerned authorities processed the proposal sent on behalf of Krishnasamy and he was being paid the pension. While so, the Assistant Provident Fund Commissioner has passed an order dated 10.11.2009 under Section 14(B) of the Employees Provident Fund Act 1952 imposing levy of damages for belated payment of pension contribution payable under employees pension scheme for the period from 3/93 to 05/02 for a sum of Rs37,347/- purported to be under Section 14(B) of the Act to pay the damages. The authority has also passed another order under Section 7(Q) of the Act demanding the interest on the damage amount.

3. Challenging the order passed by the first respondent under Section 14(B) of the Act, the petitioner filed a statutory appeal before the Employees Provident Fund Appellate Tribunal, New Delhi in A.T.A.No.879(13) of 2009 and in that appeal, the petitioner filed waiver application. While pending adjudication before the Appellate Tribunal, the impugned demand notice of attachment dated 23.04.2010, was served on the petitioner. Challenging the same, the present writ petition is filed.

4. Learned Counsel appearing for the petitioner would submit that for the non-members of the petitioner's Bank, the contribution was not paid to the EPF authorities. However, one of the person made contribution, pursuant to which, the contribution was paid and therefore, imposing damages against the petitioner is not sustainable one. Hence, the learned Counsel appearing for the petitioner would pray for appropriate orders.

5. Learned Counsel appearing for the respondents would submit that during the pendency of the writ petition, the appeal preferred by the petitioner before the Appellate Tribunal was already dismissed for default and further, the petitioner has not obtained any interim order before the Appellate Tribunal. Hence, in the absence of any interim order, the respondents authorities rightly issued the demand notice against the petitioner, which is legally sustainable one. Without pursuing the matter before the Appellate Tribunal, challenging the demand notice issued by the authorities is not sustainable one. Accordingly, the learned Counsel would pray for dismissal of the writ petition.

6. Heard the learned Counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents and perused the materials placed on record.

7. The facts in the present case are not in dispute. Admittedly, the petitioner is the District Central Co-operative Bank is incorporated under the Tamilnadu Co-operative Societies Act and the rules made thereunder. The petitioner is also an establishment covered under the Employees Provident Fund and Miscellaneous Provisions Act (hereinafter referred as “Act”). The Assistant Provident Fund Commissioner has issued a letter dated 26.11.202 stating that the petitioner has given the membership for EPF contribution upto A/c No.TN/29769/44, but the Bank has remitted the EPS(Employees Pension Scheme) contribution upto A/c No.TN/29769/217 only. The Bank was requested to remit the EPS contribution in respect of remaining 27 employees. Subsequently the Bank has remitted the pension fund contribution for 17 members, out of 27 members, since the remaining 10 members have already attained the age of superannuation. After long persuasion, one Krishnasamy has only come forward to remit his contribution. Thereafter a proposal was sent on behalf of the said Krishnasamy to the first respondent and the concerned authorities processed the proposal sent on behalf of Krishnasamy and he was being paid the pension.

8. While so, the Assistant Provident Fund Commissioner has passed an order dated 10.11.2009 under Section 14(B) of the Employees Provident Fund Act 1952 imposing levy of damages for belated payment of pension contribution payable under employees pension scheme for the period from 3/93 to 05/02 for a sum of Rs37,347/- purported to be under Section 14(B) of the Act to pay the damages. The authority has also passed another order under Section

7(Q) of the Act demanding the interest on the damage amount. Challenging the order passed by the first respondent under Section 14(B) of the Act, the petitioner filed a statutory appeal before the Employees Provident Fund Appellate Tribunal, New Delhi in A.T.A.No.879(13) of 2009 and in that appeal, the petitioner filed waiver application. While pending adjudication before the Appellate Tribunal, the impugned demand notice of attachment dated 23.04.2010, was served on the petitioner.

9. It is also brought to the notice of this Court that during the pendency of the writ petition, the appeal preferred by the petitioner before the Appellate Tribunal was already dismissed for default and further, the petitioner has not obtained any interim order before the Appellate Tribunal. Therefore, in the absence of any interim order, the respondents authorities issued the demand notice against the petitioner. Without pursuing the matter before the Appellate Tribunal, challenging the demand notice issued by the authorities is not sustainable one.

10. For the above reasons, the writ petition is misconceived and the same is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

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.

To

1.The Assistant Provident Fund Commissioner,
Employees Provident Fun Organisation,
Regional Office, Lady Doak College Road,
Chokkikulam, Madurai 625 002,
Tamil Nadu.

2.The Recovery Officer,
Office of the Recovery Officer,
Employees Provident Fund Organisation,
Regional Office, Lady Doak College Road,
Chokkikulam, Madurai.

+1 CC to M/s.K.MURALISANKAR, Advocate(SR-13542[F] dated 25/03/2021)

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-13860[F] dated 26/03/2021)

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