BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.10010 of 2011
and
M.P.(MD)Nos.2 of 2011 and 1 of 2013

M/s First Garments Manufacturing
Company(I) Pvt.,Ltd.,
NO.4/132, Aruppukkottai Main Road,
Valayankulam, Madurai-625 022,
Madurai District,
through its Deputy General Manager. ... Petitioner

Vs.

1.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minor, Core-II, 4th Floor,
Lakshmi Nagar,
New Delhi-110 092.

2.The Regional Provident Fund Commissioner,
Employees' Provident Fund Organization
Regional Office,
Lady Doak College Road,
Chokkikulam,
Madurai-625 002. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records on the file of the first respondent herein in ATA No.573 (13) 2008 and to quash the order dated 01.08.2011 passed therein.

For Petitioner	:	Mr.C.Karthikeyan for Mr.P.Chandra Bose
For Respondents	:	Mr.V.S.V.Venkateshvaran

ORDER

This Writ Petition is filed seeking issuance of a writ of certiorari to call for the records on the file of the first respondent herein in ATA No.573 (13) 2008 and to quash the order dated 01.08.2011 passed therein.

2. The case of the petitioner is that the petitioner concern is a Private Limited Company registered under the Companies Act, 1956 and the petitioner concern is also covered under the Factories Act and the Rules framed thereunder and it is having Certified

Standing Orders certified by the Joint Commissioner of Labour, Madurai under the Employment Standing Orders Act , 1946, through the proceedings dated 27.02.1998. The petitioner concern is a Multi National Export oriented Garments Factory and the concern is implementing the EPF Act with letter and spirit from the date of its coverage. The petitioner concern produces good quality of garments in tune with the competitive standards in the world market. Further, the petitioner concern is having well equipped modernized imported machineries for the production of the garments. The petitioner concern is also having a list of sophisticated machineries used for the production of the garments and it has been listed at the time of 7A hearing. The concern is in need of well trained and equipped workers for the production of garments. However, most of the employees are women belonging to the nearby villages and under educated persons and the petitioner concern have to provide best training to their employees in all aspects relating to garments manufacturing and accordingly, they are doing the same.

3. While so, the Enforcement Officers of the second respondent inspected the petitioner concern on 27.02.2006 and they perused all available records at the time of inspection. Subsequently, through their letter dated 27.02.2006, the Inspecting Official had called for certain documents and directed to produce the documents on 01.03.2006. In compliance of the same, the petitioner concern submitted the relevant documents ie., Apprentice Attendance Register, Balance Sheet, Ledger and Day Books and also stated at the time of inspection that the apprentice employees are not engaged as regular employees and they that they are not engaged for any production work and that they are purely under the Apprentice Scheme for getting training for which they receive stipend only. Further the petitioner concern represented that they need 20 days time for production of certain documents and also submitted reasons for their request.

4. Further the Government of Tamil Nadu, vide its G.O.Ms.No.108, Labour & Employment (M-a), dated 28.06.2010, notified the Enforcement Officers as Inspectors under Section 13(1) of the EPF Act in relation to State of Tamil Nadu. Therefore, on the date of inspection and on the date of submitting report, the Enforcement Officers are not Inspectors under Section 13(1) of the EPF Act and they were mere officers of the EPF Organization and they have no legal authority to inspect or seize and submit the report as Inspectors and they have no legal authority to do so. However, the Enforcement Officers submitted a report, dated 28.02.2006, as if the petitioner concern has not engaged 61 apprentice employees, but engaged them as casual employees and, therefore, claimed contribution to the said apprentice employees. Subsequently, after receipt of the report dated 28.02.2006, the petitioner concern submitted a detail reply dated 18.05.2006, in which the petitioner concern stated that the non-enrollment of 61 employees for EPF was on account of their being apprentice employees and that they are not

casual employees and requested the authorities to drop further proceedings. Thereafter, the petitioner concern received a summon from the second respondent to appear for the 7A hearing fixed on 26.06.2006. The petitioner concern appeared before the first respondent and filed a detailed reply dated 05.09.2006 and also produced the relevant documents for perusal.

5. Thereafter, as per the direction of the second respondent, the Enforcement Officer visited the petitioner concern and verified the records and submitted a report to the second respondent, dated 09.07.2007 by stating that the employees' salary has been paid as Basic Pay, Dearness Allowance and hence, they will be treated as regular employees and not apprentices and the petitioner concern has not enrolled the 47 employees with effect from 01.03.2006 and arrived a sum of Rs.3,00,524.50 as dues for the period from April 2005 to January 2006. A copy of the report was also furnished to the petitioner concern at the time of 7A hearing.

6. Further, among 61 apprentice employees, who got 3 years training in apprentice scheme, 10 trained apprentices were enrolled on 01.03.2006 and one trained apprentice employee was enrolled on 01.04.2006. Thereafter with effect from 01.06.2006, 34 apprentice employees were enrolled into the EPF scheme and on 01.06.2006 along with 34 trained and completed apprentices 150 persons were recruited as new hands and were also enrolled into the EPF. While so, without any justifiable reason, the EPF department is unnecessarily harassing the petitioner concern and this fact has been represented to the competent authority through their representation dated 05.09.2006. However, without considering the said explanation, the second respondent passed an order dated 29.01.2007 by directing the petitioner concern to pay the contribution of Rs.6,76,713/- in relation to the said 61 apprentice employees.

7. Aggrieved by the said order of the second respondent, the petitioner concern filed an appeal under Section 7(1) of the EPF Act before the EPF Appellate Tribunal at New Delhi on 07.07.2008. During the pendency of the appeal, the Recovery Officer of the EPF Organization initiated recovery proceedings and against that, the petitioner concern approached this Court by filing writ petition in W.P.(MD)No.2657 of 2009 and this Court granted an interim order on condition to deposit a sum of Rs.2,00,000/- and subsequently, the first respondent Tribunal directed the petitioner concern to deposit 40% of the ordered amount and accordingly, the petitioner concern deposited a sum of Rs.2,70,700/-. Thereafter, the Appellate Tribunal confirmed the order of the second respondent and dismissed the appeal. Challenging the same, the present writ petition is filed.

8. Learned Counsel appearing for the petitioner submitted that as per the Certified Standing Orders only, recruitment process was adopted and only the unemployed girls were recruited for the

purpose of giving training and hence, without considering the Certified Standing Orders owned by the Company, the direction of the EPF authority and the consequent confirmation of the order by the Appellate Tribunal reveals total non-application of mind on the part of the said authorities and the order directing the petitioner concern to pay the contribution, is wholly unsustainable and, accordingly prays for allowing the petition.

9. Per contra, learned Counsel appearing for the respondents submitted that after hearing the petitioner and after perusing the entire records, the second respondent arrived at conclusion that the innocent girls, who were shown as apprentices are extracted with works on par with the regular employees, which was elucidated from the materials submitted by the petitioner and proper appreciation of the materials and after adjudication, the order was passed and after appreciation of all the factual matrix, the original authority passed, which was confirmed by the appellate authority and, the well considered order does not require any interference under Article 226 of the Constitution of India and hence, he would pray for dismissal of the writ petition.

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

11. Admittedly, the status of the petitioner company as one registered under the Companies Act, 1956 and is also covered under the Factories Act and the Rules is not in dispute. Further, the petitioner concern has its own Certified Standing Orders.

12. The Inspection by the Enforcement Officers of the second respondent led to the order that 61 employees have not been shown on the rolls of the petitioner organisation as employees, but have been shown as apprentice, and that the contribution in relation to the 61 employees have not been paid and, therefore, contribution was claimed for the said persons. Subsequent to the said report, the officers of the 2nd respondent further inspected the petitioner concern and elucidated from the materials that the said employees, who are shown on the rolls as apprentice employees, are being paid salary in broken components as Basic Pay, Dearness Pay, etc., which is normally paid in relation to employees, who are generally on the regular rolls of the petitioner and, therefore, the said 61 persons cannot be said to be apprentice, as the amount paid to them cannot be qualified as stipend. Further, it was found that the petitioner concern had not enrolled 47 employees as on 1.3.06 on its rolls with effect from 01.03.2006 and, accordingly, a sum of Rs.3,00,524.50 was claimed as dues for the period from April 2005 to January 2006. A copy of the report showing the findings of the inspecting officers was also furnished to the petitioner concern at the time of 7A hearing to which the petitioner submitted its further explanation. After considering all the relevant records and explanations

submitted by the petitioner concern, the second respondent passed an order dated 29.01.2007 directing the petitioner concern to pay the contribution of Rs.6,76,713/- pertaining to the said 61 apprentice employees. In appeal before the 1st respondent, the 1st respondent, on independent application of mind to the materials placed before it, concurred with the findings arrived at by the 2nd respondent.

13. Though it is the contention of the petitioner that the 61 persons were under the apprentice scheme getting training and on completion of successful training, they were absorbed and, therefore, the period of training cannot be said to be a term in which they were shown as regular employees, however, the said submission cannot be accepted for the simple reason that payment has been made to the said persons under the component of Basic Pay, Dearness Pay, etc., which has been elucidated from the records and a categorical finding to the said effect has been given by both the authorities. To negate the said stand, the petitioner has not placed any materials to show that such was not the case and no explanation, much less explanation, has been offered by the petitioner to show as to why the components were shown as Basic Pay, Dearness Pay, etc., when stipend is a consolidated amount, which does not take within its fold the components that form the salary. Such being the uncontroverted position, the findings recorded by the authorities below, who are fact finding authorities, and the said findings are based on uncontrverted materials, the stand of the petitioner to the contra, in the absence of any material, cannot be accepted and the said contention deserves to be dismissed.

14. For the reasons aforesaid, the concurrent conclusions arrived at by the authorities below, being essentially in the nature of facts and the inference drawn upon the same being legitimate inferences, this Court is of the considered opinion that no interference is warranted with the well considered findings rendered by the authorities below. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (ADII)

// 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

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