



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2021

CORAM:

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

W.P. (MD)No.10625 of 2011

and

M.P.No.1 of 2011

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Mahalakshmi Matriculation School,
Kalugumalai Road,
Sankarankoil - 627 754
Tirunelveli District
Rep. by its Correspondent

... Petitioner

versus

1. The Presiding Officer,
The Employees' Provident Fund
Appellate Tribunal,
Core-II, 4th Floor, Laxmi Nagar
District Centre,
Laxmi Nagar,
New Delhi - 110 092.

2. The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
NGO 'B' Colony, Perumalpuram Post,
Tirunelveli - 627 007.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records relating to the order dated 12.07.2011 passed by the 1st respondent in A.T.A.No.548(13)/2010 and quash the same as illegal.

For Petitioner : Mr.M.E.Ilango

For Respondents : Mr.K.Muralisankar for R2

**ORDER**

This writ petition has been filed seeking for the issuance of Writ of Certiorari, to call for the records relating to the order dated 12.07.2011 passed by the 1st respondent in A.T.A.No.548(13)/2010 and quash the same as illegal.

2. The petitioner is a small matriculation school functioning without receiving any aid from the State Government. The petitioner school was started with an intention to cater to the needs of the children living in remote villages situated in and around Sankarankoil Taluk. According to the petitioner, from the date of allotment of code number, the petitioner has been remitting the EPF contribution in respect of eligible employees without committing any default. While so, the officials of the 2nd respondent visited the school on 08.09.2009 and took away various records and registers and in pursuance thereof, the 2nd respondent issued a show cause notice dated 22.09.2009 and called the petitioner for enquiry under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Act"). Though the second respondent called upon the petitioner for enquiry, however, without giving adequate opportunity to the petitioner, passed an order of ex parte dated 22.03.2010, demanding a sum of Rs.8,17,462/-.

3. According to the petitioner, the 2nd respondent, while determining the amount due from the petitioner, had notionally taken the salary paid to the employees based on G.O.Ms.No.34 dated 05.05.2000. The said G.O. prescribing minimum standard of wages payable, which has been challenged before this Court, wherein, an interim order of stay has been granted. Hence, the 2nd respondent was not right in relying upon the said G.O. for notionally arriving at the salary payable to the staff employed in the petitioner school. Aggrieved by the order dated 22.03.2010 passed by the second respondent, the petitioner preferred a review application under Section 7B of the Act. However, without assigning any independent reason, the 2nd respondent had mechanically confirmed the earlier order by his proceedings dated 22.07.2010. As the orders passed by the 2nd respondent was contrary to the provisions of the Act, the petitioner filed an appeal before the first respondent under Section 7-I of the Act. During the pendency of the appeal, the second respondent directed attachment of the petitioner Bank account, which was challenged before this Court in W.P.No.11311 of 2010, wherein, stay was granted on condition that the petitioner deposits Rs.2,00,000/-. The said order has been complied with. Subsequently, the Tribunal dismissed the appeal vide order dated 12.07.2011. Since the appeal has been dismissed, the writ petition was also dismissed as infructuous. Challenging the order dated 12.07.2011, the present writ petition has been filed.



4. The learned counsel appearing for the petitioner submitted that the petitioner is not having any objection to comply with the provisions as contemplated under Section 2(b) of the Act. However, it is the grievance of the petitioner that G.O.Ms.No.34 dated 05.05.2000 is not applicable to the School and when the issue about the validity of G.O.Ms.No.34 dated 05.05.2000 is pending, determination of the amount by applying the said G.O., is per se impermissible. Therefore, he prays for allowing the writ petition.

5. The learned counsel appearing for the petitioner further submitted that in order to show its *bona fide*, the petitioner is ready to deposit another sum of Rs.3,00,000/- (Rupees Three lakhs only) and prayed that this Court may set aside the impugned order and remand the matter back to the authority concerned for fresh consideration to decide the question as to whether G.O.Ms.No.34, dated 05.05.2000, would be applicable to the petitioner school or not.

6. Learned counsel appearing for the 2nd respondent has no objection to such an order being passed.

7. In view of the above, the writ petition is allowed by setting aside the impugned order dated 12.07.2011. The petitioner is directed to deposit a sum of Rs.3,00,000/- (Rupees three lakhs only), as undertaken by it, with the 2nd respondent, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the 2nd respondent is directed to consider the issue afresh and pass appropriate orders as to whether G.O.Ms.No.34, dated 05.05.2000, is applicable to the petitioner School or not, within a period of twelve weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. The Presiding Officer,
The Employees' Provident Fund
Appellate Tribunal,
Core-II, 4th Floor, Laxmi Nagar
District Centre,
Laxmi Nagar,

<https://hcservices.hc.madras.gov.in/> 110 092.



2. The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
NGO 'B' Colony, Perumalpuram Post,
Tirunelveli - 627 007.

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+1 CC to M/s.M.E.ILANGO, Advocate (SR-14513[F] dated 30/03/2021)

+1 CC to M/s.K.MURALISANKAR, Advocate (SR-14628[F] dated 31/03/2021)

W.P. (MD) No.10625 of 2011
29.03.2021

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MR(11.05.2021) 4P 5C