BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.15022 of 2011
and
M.P.(MD)No. 1 of 2011

The Regional Provident Fund Commissioner,
Office of the Employees Provident Fund Organisation,
Regional Office,
Lady Doak College Road,
Chockikulam,
Madurai-625 002. ... Petitioner

Vs.

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

2. M/s R.D.145 Tamil Nadu State Transport
Corporation Employees Cooperative Society Ltd.,
Karaikudi-630 307,
Kovilur,
Sivagangai District. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records relating to the impugned order in ATA No.720 (13) 2010, dated 24.08.2011, issued by the first respondent and quash the same.

For Petitioner : Mr.V.S.V.Venkateshwaran

For Respondents : No Appearance for R.2

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ORDER

The Writ Petition is filed seeking for issuance of a writ of Certiorari to call for the records relating to the impugned order in ATA No. 720 (13) 2010, dated 24.08.2011, issued by the first respondent and quash the same.

2. The case of the petitioner is that the second respondent paid the Employees Provident Fund contribution with enormous delay and thereby, the Employees Provident Fund Authority initiated proceedings under Sections 7Q and 14-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and imposed damages with interest. Challenging the said order, the second respondent filed an appeal before the Appellate Tribunal in ATA No.720 (13) 2010, dated 24.08.2011. The Appellate Tribunal, after discussing the factual matrix of the case, set aside the order passed by the Employees Provident Fund authority and remanded back the matter to the EPF Authority to assess the liability @ 17% (inclusive of interest). Challenging the same, the present writ petition is filed by the EPF Authority.

3. Learned Counsel appearing for the petitioner submits that if the employer has delayed in depositing the contribution, which is more than six months, the EPF authority has right to collect damages at the rate of 37%, apart form interest. However, contrary to the said provision, the Appellate Tribunal remanded the matter back for assessing the liability @ 17% inclusive of interest, which is unsustainable, as the said authority cannot order collection of lesser interest, without any material, which is in favour of the second respondent. On that sole ground, the present writ petition is filed.

4. This Court also heard the learned Counsel appearing for the second respondent on the above contention and perused the materials placed on record.

5. The facts in the present case are not in dispute. The second respondent is a Co-operative Society registered under the Cooperative Societies Act and it was making its contribution regularly. Due to financial crunch, the second respondent Company was not able to make contribution to the EPF Authority in time. For the delay in depositing the EPF dues, the EPF Authority initiated proceedings under Sections 7Q and 14 B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and imposed damages with interest. Challenging the said order, the second respondent filed an appeal before the Appellate Tribunal in ATA No.720 (13) 2010, on the ground that due to financial constraints, the second respondent was not able to make the contribution regularly, and that the said delay was neither wilful nor wanton and that there was no *mens rea* on the part of the second respondent in making the delayed payment. The appellate tribunal, after considering all the materials placed before it, had come to the conclusion to remand the matter back to the petitioner with the direction aforesaid.

6. The order passed by the Appellate Tribunal further reveals that the Tribunal after properly considering the issue, while coming to the conclusion that the petitioner is bound to pay interest u/s

7-Q of the Act, which is mandatory, but that the damages u/s 14-B of the Act is not mandatory, but only discretionary and in view of the discretionary nature of the levy of damages u/s 14-B of the Act, the first respondent, in exercise of its appellate powers, had fixed the maximum liability for payment @ 17% inclusive of interest, which cannot be stated to be an improper order. The reasons assigned by the first respondent for issuing the said direction coupled with a careful analysis of the provisions of the Act disclose that the first respondent has acted well within its powers to pass the said order, which could in no way be termed to be an order exceeding the powers of the first respondent. This Court is of the considered view that that order passed by the first respondent/Appellate Authority is just and reasonable and does not warrant any interference at the hands of this Court.

7. For the reasons above stated, the Writ Petition is devoid of merits and accordingly, the same is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

// 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

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

W.P(MD)No.15022 of 2011

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