



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.15224 of 2011

and

M.P.(MD)No. 2 of 2011

WEB COPY

1.St.Joseph College of Education,
2.St.Joseph Teacher Training Institute,
Golden City,
Nanguneri Road,
Kadamboduvalu Post,
Via Nanguneri-627 108,
Tirunelveli District,
both represented by their Correspondent

.... Petitioners

Vs.

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

2.The Manager,
Indian Overseas Bank,
Kalakad Branch,
Kalakad,
Tirunelveli 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 passed by the first respondent in his proceedings No.TN/TNY/75940/Enf.1/Circle 14/CD 1/T.15/2011 dated 17.11.2011 and received on 15.12.2011 and quash the same as illegal .

For Petitioner : Mr.M.E.Ilango

For Respondents : Mr.K.Muralishankar
for R.1

: Mr.Pala.Ramasamy
for R.2



* * * * *

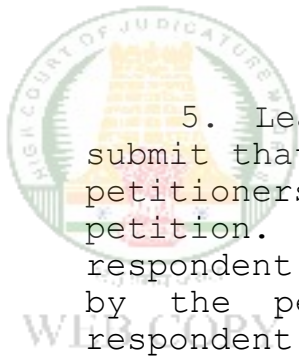
ORDER

The Writ Petition is filed seeking for issuance of a writ of Certiorari to call for the records relating to the impugned order passed by the first respondent in his proceedings No.TN/TNY/75940/Enf.1/Circle 14/CD 1/T.15/2011, dated 17.11.2011 and received on 15.12.2011 and quash the same as illegal .

2. The petitioners are educational institutions and have less than 20 employees. While the Teacher Training Institute was started in the year 2006, the College of Education was started in the year 2008 and in both courses, the petitioners are permitted to admit 100 students each. Since the combined employees strength for both the institutions was below 20, the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 are not applicable to the petitioners. While so, without conducting any enquiry or providing any opportunity as mandated under Section 7A(1) (a) of the Act for determining the applicability of the Act to the petitioners herein, the first respondent unilaterally allotted a common code number to the petitioners by his proceedings dated 08.02.2011, informing the petitioners that they are liable to be covered retrospectively from 01.07.2006 and subsequently, the petitioners were called upon to appear in person for an enquiry under Section 7(A)(1)(b) of the Act to determine the amount of contribution payable by the petitioners. However, without providing adequate opportunity as mandated under the Act as well as the principles of natural justice, by an order dated 02.09.2011, the first respondent demanded a sum of Rs.6,34,963/- for the period from 07/2006 to 02/2011. It is pertinent to mention that during the enquiry, the petitioners were compelled to pay Rs.2,95,168/- and the petitioners had also paid the said amount under protest.

3. Aggrieved by the said order, the petitioners preferred an appeal under Section 7-1 of the Act with the delay of 120 days. While the said appeal is pending before the Appellate Tribunal, the first respondent hurriedly passed the present impugned order dated 17.11.2011, by attaching the bank account. Challenging the said order, the present writ petition is filed.

4. Learned Counsel appearing for the petitioners would submit that though the first respondent demanded a sum of Rs.6,34,963/-, out of the said amount, the petitioners paid a sum of Rs.2,95,168/- and against the said order of demand by the first respondent, the petitioners also filed an appeal before the Appellate Authority in AT.No.94 of 2017 and it is pending and without considering the same, the first respondent passed the present impugned order and hence, the learned Counsel would pray for appropriate orders.



5. Learned Counsel appearing for the first respondent would submit that the attachment order was passed in the year 2011 and the petitioners had not mentioned any appeal number in the present writ petition. However, the learned Counsel appearing for the first respondent would submit that till the disposal of the appeal filed by the petitioners before the Appellate Authority, the first respondent will not take any coercive steps.

6. Recording the submissions made by the learned Counsel appearing for the first respondent, this Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// 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.

SSL

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

+1 CC to M/s.M.E.ILANGO, Advocate (SR-14516[F] dated 30/03/2021)

+1 CC to M/s.K.MURALISANKAR, Advocate (SR-14621[F] dated 31/03/2021)

W.P(MD)No.15224 of 2011

29.03.2021

GS (28.04.2021) 3P 4C