BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07.01.2021

CORAM:

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

W.P.(MD)No.3771 of 2011

and

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

M/s.Sri Ganapathy Mills & Co. Ltd.,
"B" Unit, Bye-Pass Road,
Virudhunagar - 626 001.
Rep. by its Personnel Officer. : Petitioner

Vs.

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

2.The Recovery Officer/The Assistant Provident Fund Commissioner,
The Employees' Provident Fund Organization,
Sub Regional Office,
Madurai - 2.

3.The Manager,
Karur Vysya Bank Ltd.,
Virudhunagar Branch,
Virudhunagar. : Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records relating to the impugned order dated 14.02.2011 passed by the first respondent in ATA No.286(13)/2008 and received on 09.03.2011 and the consequential order passed by the second respondent in his proceedings in Ref.No.M7/TN/MDU/273-A/RECY/RO/2011, dated 21/23.03.2011 and quash the same as illegal.

For Petitioner : Mr.Jerin Mathew
for M/s.Ajmal Associates

For Respondents 2&3 : No appearance

ORDER

The case of the petitioner is that the petitioner mill is a limited company incorporated under the Indian Companies Act, 1956. The petitioner started its commercial production in the year 1990 and has been doing business profitably. It has been complying with all the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter called as 'the Act'). The petitioner further averred that there was a huge employee turn over which is peculiar to the industry, the petitioner had to recruit apprentices for imparting training to them so that their services could be utilised after completion of their training. The said apprentices were recruited under the Certified Standing Orders applicable to the establishment and as such, they are excluded employees as envisaged under paragraph 26(3) of the EPF Scheme. Without considering the said legal position, the EPF authorities initiated enquiry under Section 7-A of the Act and for which, the petitioner submitted a reply on 12.08.2004. However, the authorities chosen to pass an order under Section 7-A of the Act on 18.03.2005 demanding a sum of Rs.10,12,732.40 as contribution due for the period between April, 1999 and July, 2004. The orders passed by the authority was contrary to law and aggrieved over the said order, the petitioner filed a Writ Petition before this Court in W.P.(MD)No.2987 of 2005. Initially, this Court granted interim order at the time of admission, however, on 01.10.2007 this Court dismissed the Writ Petition with liberty to file an appeal before the first respondent as contemplated under Section 7-I of the Act. In terms of the said order, the petitioner filed an appeal under Section 7-I of the Act before the first respondent and the first respondent at the time of admission has pleased to direct the petitioner to deposit 50% of the amount and the said condition has also been duly complied with and the appeal was taken on file by the first respondent in ATA No.286(13)/2008 and also granted interim stay for the balance amount.

2.While the matter stood thus, the first respondent posted the appeal for hearing at its camp in Coimbatore on 28.12.2010. However, as the petitioner mill had engaged a counsel based at New Delhi to handle the appeal, they requested the Tribunal to grant adjournment and hear the appeal at New Delhi itself. However, without appreciating such a request, the appellate authority dismissed the appeal on 14.02.2011 and the same was served on the petitioner on 09.03.2011. Challenging the same, the present Writ Petition has been filed.

3.The learned Counsel appearing for the petitioner would submit that though the petitioner filed an appeal before the first respondent, the said appeal was not prosecuted in letter and spirit since the petitioner has engaged a Counsel at Delhi and the said appeal was conducted at Coimbatore. So, in view of the above, the petitioner could not able to engage a Counsel at Coimbatore for which the order was passed in the presence of a Junior Counsel who represented the case before the camp of the first respondent at Coimbatore.

4.Further, the learned Counsel appearing for the petitioner would submit that the petitioner management had entered into 18(1) settlement with the employees and hence, the settlement is binding on the parties in which the apprentices is not workman and the petitioner need not to pay the EPF contribution for the employees. Further, the learned Counsel appearing for the petitioner would submit that the Certified Standing Orders treated the entitlement for apprentices and the apprentices are exempted from payment of contribution and without considering all those things, the first respondent passed order which is unsustainable in law. Accordingly, the petitioner prayed for allowing this Writ Petition.

5.Though notice was served on the respondents, no one appeared on behalf of the respondents. Since the matter is pending right from 2011 onwards, this Court is inclined to dispose of the Writ Petition based on the available records.

6.This Court perused the order and the perusal of the order reveals that initially, the EPF authorities inspected the mill and arrived at a conclusion that the persons employed are not apprentices and they are full time employees. Based on the report, they have passed an order dated 18.03.2005 under Section 7A of the Act and fixed the amount of Rs.10,12,732.40 as contribution towards Provident Fund and the said order was challenged before the appellate authority by the petitioner and the said matter was heard on 14.02.2011 and no one appeared on behalf of the appellant, however, after hearing the respondents and based on the available records, the appellate authority passed the order. This Court perused the order in which the appellate authority arrived a conclusion based on the statutory provisions that the definition of the word 'employee' makes it clear that a person appointed as a trainee under Certified Standing Orders or under the Apprentices Act are excluded from the ambit of employee. The trainee is a person who was appointed to learn the work but not to do any work in the factory. However, on perusal of the original authority order reveals that the persons were working regularly in the factory and they are receiving the payment. Since the employees working regularly in the factory cannot be treated as a trainee and they are rightly treated as employee of the establishment and the appellate authority also arrived at a conclusion based on the decision in the case of ***NEPC Textile Vs. RPFC*** reported in ***2007 LLR 535*** and decided the matter. Further, in the present case, the petitioner by referring to 18(1) settlement on one hand claims that that the employees are trainees and they were allowed to learned as apprentices. When that being the position, this Court is unable to understand how these apprentices have entered into an agreement with the petitioner mill even before their members of the union and the 18(1) settlement reveals that the petitioner mill entered into an agreement with Ganapathy Mills Union, when the apprentices are not members of the union how the union settlement binding on the apprentices. Hence, this Court has no hesitation to hold that the 18(1) settlement itself was created for defeating the rights of the employees who were worked in the mill.

7.For all the above reasons, this Court is not inclined to interfere with the order of the first respondent. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

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SJ(CO)
KB(01.03.2021) 4P 3C