



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.4532 of 2011

and

M.P. (MD)No.1 of 2011

and

W.M.P. (MD)No.16676 of 2017

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Noorul Islam College of Engineering,
represented by its Chairman,
A.P.Majeed Khan,
Kumaracoil,
Thuckalay-629 180,
Kanyakumari District.

... Petitioner

Vs.

1.The Presiding Officer,
Employees' Provident Fund Appellate Tribunal,
SCOPE MINAR,
CORE II 4th Floor Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi-110 092,
Camp at Coimbatore.

2.The Assistant Provident Fund Commissioner,
EPFO, SRO,
66, Water Tank Road, Nagercoil,
Kanyakumari District-629 001.

3.D.Swaran Victrops Nagson

... 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 in ATA No.690(13) 2009, dated 28.01.2011 and quash the same.

For Petitioner : Mr.M.Azeem

For Respondents : Mr.K.Gurunathan
Standing Counsel for R.2

Mr.Niranjan S.Kumar
for M/s V.Balaji for R.3

ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorari to call for the records on the file of the first



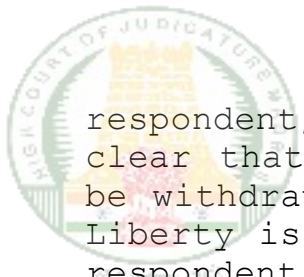
respondent in ATA No.690(13) 2009, dated 28.01.2011 and quash the same.

2. The case of the petitioner is that the third respondent was employed as a Lecturer in the petitioner College and he received a monthly salary as above Rs.5,000/- and he entered into service as Lecturer in the year 1996 and resigned the said post on 30.04.2007. Thereafter, he made a complaint before the Regional Provident Fund Commissioner, Nagercoil, on the ground that the Provident Fund contribution was not paid to the Provident Fund Authorities. Therefore, the Provident Fund Authorities conducted an inspection under Section 7(A) of the Employees' Provident Fund and Miscellaneous Provisions Act. After taking into consideration the enquiry report filed by the authorities, the second respondent has passed an order by stating that the petitioner College has to pay the Provident Fund contribution towards the third respondent to the tune of Rs.1,97,327/-, vide order dated 30.07.2009. Aggrieved against the same, the petitioner filed an appeal before the Appellate Tribunal. However, the Appellate Tribunal without advertting to any of the materials, simply dismissed the appeal, vide one paragraph order, dated 28.01.2011, which is absolutely not sustainable.

3. As per the order passed by the second respondent, under Section 7(A) of the Employees' Provident Fund and Miscellaneous Provisions Act, the petitioner College deposited the entire amount and the same is lying in the Provident Fund Account and there is no prejudice to the third respondent in the event of remanding the matter for fresh consideration, before the appellate Tribunal.

4. Heard the learned Counsel appearing on either side and perused the materials placed before this Court.

5. On a perusal of the order of the Appellate Tribunal, it reveals that nothing of the factual aspects are discussed. Simply the Appellate Tribunal concluded that the petitioner is not questioning the jurisdiction of the Provident Fund Authority. However, the fact remains that the petitioner questioned the jurisdiction of the Provident Fund Authority, since the third respondent received lesser than the sum of Rs.5,000/- as monthly salary and therefore, the Authorities were excluded from the Act. Contrary to that, the Appellate Authority arrived that the jurisdiction was not questioned. Hence, the order passed by the Appellate Authority is a non-speaking order, which cannot be allowed to continue and which is also bad in law. Accordingly, the order passed by the Appellate Authority is set aside and the matter is remitted back to the Appellate Tribunal for fresh consideration. The Appellate Tribunal is directed to pass a detailed order after hearing the petitioner as well as the third



respondent, as expeditiously as possible. Further it is also made clear that the amount deposited by the petitioner College cannot be withdrawn till the disposal of the appeal before the Tribunal. Liberty is also granted to the petitioner as well as to the third respondent to raise all issues before the Appellate Tribunal.

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6. With the above observations, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CRL.SIDE)

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/ /2021

Sub Assistant Registrar(CS)

SSL

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 Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi-110 092,
Camp at Coimbatore.

+1 CC to Mr.M.AZEEM, Advocate (SR-575[F] dated 08/01/2021)

+1 CC to Mr.V.BALAJI, Advocate (SR-577[F] dated 08/01/2021)

+1 CC to Mr.K.GURUNATHAN, Advocate (SR-620[F] dated 08/01/2021)

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KM (29.01.2021) 3P 5C