BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 15651 of 2013
and
M.P. (MD) No. 2 of 2013
and
M.P. (MD) No. 1 of 2014

Madurai Kamaraj University,
Rep. by its Registrar-in-Charge,
Palkalai Nagar,
Madurai - 625 021. ... Petitioner

-vs-

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar, Laxmi Nagar, New Delhi - 110 092.

2. The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, Post Box No.1,
Lady Doak College Road,
Chockikulam, Madurai - 625 002.

3. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
Regional Office, Post Box No.1,
Lady Doak College Road,
Chockikulam, Madurai - 625 002.

4. The Enforcement Officer/Accounts Officer (Legal),
Employees Provident Fund Organisation,
Regional Office, Post Box No.1,
Lady Doak College Road,
Chockikulam, Madurai - 625 002.

5. G.Pandian
(R5 impleaded vide order dated 19.02.2020
in W.M.P. (MD) No. 11523/2016) ... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records comprised in ATA No.755(13) of 2010 dated 17.04.2012 of the First Respondent and quash the same as being arbitrary, illegal and contrary to the provisions of the Employees Provident Fund and

Miscellaneous Provisions Act, 1952 and consequently direct the Respondents to forbear from taking any further proceedings in pursuance of the order including TN/MDU/Circle 12/TN/57441/Enf. C/2013 dated 05.08.2013 issued by the Third Respondent and TN/MDU/57441/M-2/EO (GS & MM)/2013, dated 21.08.2013, 30.08.2013 and 10.09.2013 of the Fourth Respondent and to refund the amount of Rs.30,25,343.50 collected from the Petitioner towards contributions to the employees provident fund.

For Petitioner : Mr. T.Sakthikumaran

For R2 to 4 : Mr. K.Muralisankar

For R5 : Mr. T.Thirumurugan

O R D E R
(through video conference)

Heard Mr. T.Sakthikumaran, Learned Counsel for the Petitioner, Mr.K.Muralisankar,Learned Counsel for the Second to Fourth Respondents and Mr. T.Thirumurugan, Learned Counsel for the Fifth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, viz., Madurai Kamaraj University, is a body corporate established by the Madurai Kamaraj University Act, 1965. The Fourth Respondent had inspected the establishment of the Petitioner on 04.10.2004 and found that 111 persons were working as temporary staff on consolidated pay and they were not covered under any Provident Fund Scheme. In furtherance thereto, proceedings under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'EPF Act' for short) were initiated by the Third Respondent against the Petitioner and after enquiry, the liability of the Petitioner for the contribution towards provident fund dues of the said 111 persons was determined as Rs. 30,25,343.50 for the period from April 2000 to August 2004 by Order in File No. TN/MDU/57441./ Enf./Circle 12/12034/2009 dated 04.03.2009. The Petitioner preferred appeal against that order under Section 7-I of the EPF Act in A.T.A. No. 755(13)2010 before the First Respondent, viz., Employees' Provident Fund Appellate Tribunal, which had by order dated 17.04.2012 dismissed that appeal confirming the order passed by the Third Respondent. In the meanwhile, the Third Respondent issued Notice No. TN/MDU/Circle 12/TN/57441/ENF C/2013 dated 05.08.2013 to the Petitioner for enquiry in proceedings under Section 7-A of the EPF Act for determining the contribution towards provident fund dues payable to the temporary employees employed by establishment of the Petitioner for the subsequent period from September 2004 to June 2012.

3. In that backdrop, the Petitioner has filed this Writ Petition challenging the order dated 17.04.2012 in A.T.A. No. 755(13)2010

passed by the First Respondent and the notices dated 05.08.2013, 21.08.2013, 30.08.2013 and 10.09.2013 for enquiry in the proceedings under Section 7-A of the EPF Act passed by the Third and Fourth Respondents.

4. The primal contention of the Learned Counsel for the Petitioner in this Writ Petition is that since the regular employees of the establishment of the Petitioner are enrolled under the Contributory Provident Fund Pension Scheme from 01.04.2003 onwards in terms of the relevant provisions of the Madurai Kamaraj University Act, 1965, and are also entitled to the pensionary benefits under the Tamil Nadu Pension Rules, 1978, as applicable to the employees of the Government of Tamil Nadu from time to time, the provisions of the EPF Act would not be applicable to the establishment of the Petition as per Section 16(1)(b) and (c) of the EPF Act, which is extracted below:-

"16. Act not to apply to certain establishments:-

(1) This Act shall not apply-

....

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits;"

It has been highlighted by the Hon'ble Supreme Court of India in ***Yeshwant Gramin Shikshan Sanstha -vs- Assistant Provident Fund Commissioner*** [(2017) 5 SCC 579] and ***Pawan Hans Limited -vs- Aviation Karmachari Sanghatana*** [(2020) 13 SCC 506] that an establishment stands automatically exempted from the provisions of the EPF Act, if the following twin conditions are satisfied:-

(i) The establishment must be either 'belonging to' or 'under the control of ' the Central or the State Government, or must have been 'set up' under any Central, Provincial or State Act; and

(ii) The employees of such an establishment should be entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government or under the Act under which the establishment has been created governing such benefits.

5. It would be necessary here to refer to the decision of the Hon'ble Supreme Court of India in ***Yeshwant Gramin Shikshan Sanstha -vs- Assistant Provident Fund Commissioner*** [(2017) 5 SCC 579], where it has been observed as follows:-

"38. As we have held that the establishment of the appellant fulfills the twin conditions specified in Section 16(1)(b), it must follow that the same is exempted from the application of the provisions of the Central Act. In the present case, however, it has been found by the authority concerned and the Tribunal, that the 16 part-time employees working in the establishment of the appellant were not covered by the State CPF Scheme applicable to the other permanent employees of the establishment inasmuch as Rule 20 does not cover the part-time employees working in the school, in case they are not doing full-time load of work. True it is that the said finding of fact cannot be overturned. Even so, is it possible to uphold the decision of the authority as confirmed by the Tribunal and the High Court - that the appellant is liable to pay towards the provident fund under the Central Act in respect of its part-time employees? Intrinsic in that direction, is that the provisions of the Central Act are invoked against the establishment of the appellant. That is impermissible. As aforesaid, Section 16 of the Central Act makes it abundantly clear that the provisions of the Central Act will have no application to the establishment, if covered by one of the excepted category provided therein. Notably, the exemption is for the establishment as a whole and for all purposes, from the application of the Central Act. Once the establishment is covered by the excepted category specified in Section 16, to get exemption, it is incomprehensible that the provisions of the Central Act can be invoked against such establishment on the specious reasoning that few (16 in this case) part-time employees working thereat were not covered by the CPF Scheme of the State Government, as applicable to rest of its employees.

....

39. It is not possible to countenance a situation that although the establishment enjoys exemption from application of the provisions of the Central Act, it is still liable to be proceeded in respect of its few (16) part-time employees. That would lead to an incongruous approach, not envisaged by the Central Act. Taking any other view would result in rewriting of the provisions of the Central Act to mean that although the establishment is exempted from the application of the provisions of the Central Act, yet it would be open to the Central authorities to proceed against such establishment in certain situations. In our opinion, once the establishment qualifies for exemption of application of the provisions of the Central Act, there is no way that the authorities under the Central Act can exercise authority over it or call upon the establishment to comply with the provisions of the Central Act, unless the exemption of the establishment is withdrawn or lifted de jure. Section 16 of the Central Act does not envisage a concept of partial exemption of application of the provisions of the Central Act in respect of employees, but the exemption operates qua the establishment for all purposes."

It appears that a different note has been struck by the Hon'ble Supreme Court of India in ***Pawan Hans Limited -vs- Aviation Karmachari Sanghatana*** [(2020) 13 SCC 506] by applying the same twin test as follows:-

"7.2 ....In our view, the Company does not satisfy the second test, since the members of the Respondent-Union and other similarly situated contractual workers were not getting the benefits of contributory provident fund under the PF Trust Regulations framed by the Company, or under any Scheme or any rule framed by the Central Government or the State Government. Consequentially, the exemption under Section 16 of EPF Act would not be applicable to the Appellant-Company."

It is, however, significant to notice here that ultimately the employer in that case was required to extend provident fund benefits to the contractual workers not covered under the provident scheme that was applicable to the regular employees so that there is uniformity in the conditions of service of all employees in that establishment.

6. In the present case, the regular employees of the establishment of the Petitioner have been receiving benefits under the Contributory Provident Fund Scheme and pensionary benefits under the Tamil Nadu Pension Rules, 1978, and if it is construed that the benefit of exemption under the EPF Act is not applicable to the establishment of the Petitioner, it would have the effect of depriving the said employees of those vested rights and would lead to unintended adverse consequences of disrupting the pre-existing arrangement of financial affairs. On the other hand, if it is held that those employees of the establishment of the Petitioner who are not entitled to the benefits under the Contributory Provident Fund Scheme and pension under the Tamil Nadu Pension Rules, 1978, cannot be covered under the EPF Act as well, it would defeat the avowed object of the beneficial social welfare legislation made for the protection of weaker sections of society, viz., workmen, who had to eke out their livelihood from the meagre wages they received after toiling hard for the same, as highlighted by the Hon'ble Supreme Court of India in ***Daily Partap -vs- Regional Provident Fund Commissioner, Punjab*** [(1998) 8 SCC 90]. At this juncture, it must be taken cognizance that the Ministry of Labour by Letter No. S-35025/15-88-SS-II dated 08.01.1989 sent to the Central Provident Fund Commissioner has issued instructions, as follows:-

"(iv) There may be establishments which employ large number of casual/contingent staff who are not entitled to the benefit of provident fund or pension. The casual/contingent staff of such establishment will continue to be covered under the Act, but their regular employees who are entitled to the benefit of provident fund pension should be excluded from the purview of the Act."

It would be useful here to extract from the authoritative pronouncement of the Constitution Bench of the Hon'ble Supreme Court of India in ***Sant Ram Sharma -vs- State of Rajasthan*** (AIR 1967 SC 1910), which reads as follows:-

"7. ....It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are

silent on any particular point, Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

It has been brought to notice that after the filing of the Writ Petition, the Petitioner has realized the anamoly in not covering some categories of employees of its establishment and in the syndicate meeting of the University of the Petitioner held on 12.09.2020, it was approved to implement the Employees' Provident Fund Scheme for the Consolidated Pay Casual Labourers (CPCLRs) drawing upto Rs. 15,000/- per month with immediate effect and the Financial Committee of the University of the Petitioner had recommended for taking action to waive the financial commitment of contribution towards provident fund for the previous period.

7. Having regard to the aforesaid legal position *viz-a-viz* the subsequent events as borne out of the record, there does not appear to be any reason to interfere with the order dated 17.04.2012 in A.T.A. No. 755(13)2010 passed by the First Respondent confirming the Order No. TN/MDU/57441./Enf./Circle 12/12034/2009 dated 04.03.2009 passed by the Third Respondent determining the liability of the Petitioner for contribution towards provident fund dues under Section 7-A of the EPF Act for 111 persons temporarily employed in the establishment of the Petitioner during the period from April 2000 to August 2004. It is accepted that in compliance of the order passed by the Third Respondent, the Petitioner has also remitted the sum of Rs. 30,25,343.50 with the concerned authority during the pendency of the appeal before the First Respondent.

8. Insofar as the matter relates to the period from September 2004 to June 2012 is concerned, the Third and Fourth Respondent shall commence enquiry in impugned proceedings under Section 7-A of the EPF Act and the concerned authorities under the EPF Act shall be at liberty to proceed further to determine the liability of the Petitioner for the relevant period by conducting enquiry following the prescribed procedure after affording full opportunity of personal hearing to all persons concerned in that regard and pass reasoned orders on merits and in accordance with law.

9. In the upshot, the Writ Petition is disposed on the aforesaid terms. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (W)

// TrueCopy //

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

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   Employees Provident Fund Appellate Tribunal,
   Scope Minar, Laxmi Nagar,
   New Delhi - 110 092.

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   Lady Doak College Road,
   Chockikulam,
   Madurai - 625 002.

+1 CC to M/s.K.MURALI SANKAR,Advocate(SR-23282[F] dated 20/07/2021)

+1 CC to M/s.T.SAKTHIKUMARAN,Advocate (SR-23446[F]dated 22/07/2021)

+1 CC to M/s.T.LAJAPATHIROY,Advocate(SR-25050[F] dated 03/08/2021)

+1 CC to M/s.K.MURALISHANKAR,Advocate(SR-25045[F] dated 02/08/2021)

W.P.(MD)No. 15651 of 2013
30.07.2021

SRM
PKP/15.09.2021/7P/9C