BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **02.02.2021**
CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.1593 of 2021
and
W.M.P.(MD) Nos.1357 & 1358 of 2021

(Through Video Conference)

The Palliyadi Handloom Weavers' Co-operative
Production and Sale Society Limited No.2489,
Rep. By its Managing Director,
Valvachakoshtam Village,
Kanyakumari District. ... Petitioner

Vs

1. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
43 P/1, Trivandrum Road,
Tirunelveli 627 002

2. The Assistant Provident Fund
Commissioner / Recovery Officer,
Employees Provident Fund Organization,
Regional Office,
65 A, Water Tank Road,
Nagercoil 629 001
Kanyakumari District.

3. The Manager,
Kanyakumari District Central Co-op Bank,
Alexander Press Road, Nagercoil 629 001
Kanyakumari District ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 1st respondent, pertaining to his order in proceedings No.TN/TI/33252/Enf.1(4)/KK-I/97 dated 10.12.1997 on his file, and the consequential order of the 2nd respondent in No.TN/NGL/33252/Recy/8F/2021 dated 06.01.2021 on his file and quash the same.

For Petitioner : Mr.Thampi.K.N., Advocate
For RR1 & 2 : Mr.K.Gurunathan,
Standing Counsel

ORDER

The petitioner herein, is a Co-operative Society registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983. By an order, dated 10.12.1997 passed under Section 7(A) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called as the 'Act'), the Provident Fund dues from the petitioner Society was determined for the period between September 1978 to October 1997. Consequently, an order dated 30.12.1997, under Section 8(F) of the Act was passed.

2. Challenging the aforesaid proceedings, the petitioner had filed a suit in O.S.No.183 of 1998 before the District Munsif Court, Padmanabhapuram. The suit in O.S.No.183 of 1998 as well as the appeal in A.S.No.32 of 2000 before the Sub Judge, Padmanabhapuram filed as against the dismissal of the suit, came to be dismissed and the petitioner had preferred the Second Appeal before this Court in S.A. No.2120 of 2003, which also was dismissed on 11.12.2019. On the strength of the dismissal order, the first respondent had issued a notice for compliance of the order passed in the Second Appeal, which required the petitioner Society to deposit the amount levied under Section 7(A) of the Act for the period between September 1978 to October 1997. Consequently, the impugned order dated 06.01.2021 came to be passed under Section 8(F) of the Act. Challenging the orders under Sections 7(A) and 8(F) of the Act, the present writ petition has been filed.

3. Mr.KN.Thampi, learned counsel for the petitioner placed reliance on the communication from the Development Commissioner, Handlooms, Ministry of Textiles, dated 13.02.1998 as well as the order of this Court passed in W.P.No.14028 of 2000, dated 11.02.2006 and submitted that the weavers of the petitioner's Society were only members of the Society and there was no “Master-Employee” relationship and therefore, the provisions of the Act is not attracted. Consequently, the orders under section 7(A) and 8(F) requires to be quashed.

4. Per contra, the learned standing counsel for the respondents 1 & 2 submitted that the weavers of the petitioner's Society are deemed to be '*employees*' as defined under the Act and the provisions of the Act are applicable to the petitioner's Society and therefore, there is no infirmity in the impugned orders.

5. I have given careful consideration to the submissions made by the respective counsels. Admittedly, the order passed under Section 7(A) of the Act was the subject matter of the civil proceedings, which became final, pursuant to the judgment passed in S.A.No.2120 of 2003, dated 11.12.2019 by this Court. In other words, the levy under Section 7(A) of the Act for the contribution period between September 1978 to October 1997, was put to challenge in the civil proceedings.

6. This Court, while dismissing the Second Appeal on 11.12.2019, had rejected the contentions of the petitioner's Society that the provisions of the Act and the schemes cannot be implemented in respect of the petitioner's Society and consequently directed the petitioner to deposit the amount along with interest assessed by the respondents towards the outstanding provident fund contribution of the workers. The relevant portion of the Judgment reads thus:-

> *"16. This Court keeps in mind that the EPF Act is a beneficial social welfare legislation which was enacted by the Legislature for the benefit of the workmen. It is meant for the protection of weaker sections of society, namely, workmen who had to eke out their livelihood from the meagre wages they receive after toiling hard for the same. Hence, the provisions under the EPF Act have to be interpreted in a manner which is beneficial to the workmen. A harmonious construction alone would help carry out the purpose of the Act.*
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> 17. Accordingly, this Court rejects the contention that the provisions of the Employees' Provident Funds Act and the Schemes cannot be implemented at all in respect of appellant Society. This Court is fully satisfied that the decisions arrived at by the Courts below does not require interference by this Court.
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> 18. Further, there is no dispute that during the enquiry under Section 7-A, the petitioner-society was given ample opportunity to put forth their case. As earlier pointed out that the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is a piece of legislation intended for conferring certain benefits on the working class of people. May be the methodology adopted by the appellant-Society in getting the work from the workers community would be different. But, they cannot wriggle out their dutiful responsibility towards paying EPF dues to the workers. Once wages are paid by the establishment either directly or indirectly as stated in the statute, it goes without saying that the workers fell within the definition of 2(f) of the EPF Act. The founding fathers of the Constitution of India thought it fit that it is a beneficial enactment pursuant to the constitutional mandate keeping in view the basic human rights of the individual in a democratic country. Therefore, it has been carefully worded that wages paid either directly or indirectly, the establishment will fall within the definition of the EPF Act.
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> 19. In view of the aforesaid discussion, the concurrent judgment passed by the Courts below stand confirmed in all respects and consequently, the appellant Society is directed to deposit the amount along with the interest assessed by respondents towards Provident Fund dues of the workers within one month from the date of receipt of a copy of this

Judgment. Since the litigation has been pending for two decades, the first respondent is directed to ensure that the provident fund amount reaches to the retired workers/ working class community within a period of two months thereafter. In this regard, the appellant-Society is directed to co-operate with the respondents to work out the EPF amount as on date. Eventually, the Second Appeal is dismissed and substantial and additional substantial questions of law are answered as indicated above. All pending Applications, if any, are accordingly dismissed. No costs. ”

7. The aforesaid extract is self-explanatory. Thus, it is clear that the learned Judge had dealt with the issues involved in the present writ petition in the judgment passed in Second Appeal and while placing reliance on the various decisions of the Hon'ble Supreme Court and the Division Bench of this Court, had held that the petitioner's Society is covered under the provisions of the Act.

8. The only contention of the learned counsel for the petitioner to assail the judgment passed in the Second Appeal is that, there is a clarification issued by the Ministry of Textiles of the Central Government which holds that, the functioning of the Co-operative Societies do not fall under the ambit of the provisions of the Act nor are the members and the Society is a “employer-employee” relationship. By referring to such clarification of the Ministry of Textiles, a learned Single Judge of the Principal Bench of the Madras High Court, had interfered with the orders passed by the Regional Provident Department in W.P.No.14028 of 2000 in the case of the ***Secretary vs. the Regional Provident Fund Commissioner, Tirunelveli and others***.

9. This Court is unable to appreciate the clarification issued by the Development Commissioner of the Ministry of Textiles. Since the learned Single Judge, while dealing with the issues involved in the S.A.No.2120 of 2003, had also disregarded the notification of the Central Government and upheld the view that the petitioner's Society does fall within the ambit of the Act. The relevant portion of the Judgment in the Second Appeal reads as follows;

“11. This Court has further noted that the weavers in question do the work in connection with the work of the appellant Society. They are also paid wages on the basis of their work. The cloth woven by the weavers is sold by the appellant Society. The yarn is supplied to the weavers by the appellant Society. Thus, it would be seen that the weavers are engaged for the work in connection with the work of the appellant Society. Therefore, it is crystal clear that there is an employer and employee relationship between the appellant Society and their weaver workers. Hence, the decisions arrived at by respondents is correct

and in order. The weaver workers are entitled for provident fund benefits and the appellant Society has to enrol them and remit the provident fund contributions in respect of them. The Act covers all types of employees employed directly and indirectly, permanent or casual and the petitioner establishment cannot absolve itself of its liability under the Act in respect of their weaver workers. ***Even though the appellant-Society has pleaded that a notification has been issued exempting weavers cooperative society by the Central Government and the same was recorded by this Court in the docket order dated 17.04.2009, there is no order of the Government of Tamil Nadu exempting the appellant Society from payment of provident fund dues in respect of their employees****. The Act is a piece of social legislation conferring certain benefits on the working class of people. It is a beneficial enactment pursuant to constitutional mandate keeping in view of the basic human rights of individuals in a democratic country. Further, the respondents gave opportunity to the appellant Society regarding the liability and quantum and it has been specifically determined. "* (emphasis added).

10. When a clarification of the Central Government has already been dealt with by this Court in the Second Appeal, the petitioner's Society would be precluded from raising any other ground before this Court. As a matter of fact, the sanctity of the communication by the Development Commissioner, Ministry of Textiles and its binding nature has not been put to test and the communication itself being a letter in reply to some telephone conversation, may not be termed as a 'Regulation'. Furthermore, the consideration of these grounds in this writ petition would amount to reviewing the judgment in the Second Appeal, which is impermissible. When the petitioner's Society themselves have suffered a Judgment in the Second Appeal, on the very same issue, placing reliance on the order passed in W.P.No.14028 of 2000, in the case of some other Society, is distinguishable on facts.

11. For the foregoing reasons, I do not find any merits in the present writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

/ /2021
Sub Assistant Registrar

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:

1. The Assistant Provident Fund Commissioner,
   Employees Provident Fund Organization,
   Sub-Regional Office,
   43 P/1, Trivandrum Road,
   Tirunelveli 627 002

2. The Assistant Provident Fund
   Commissioner / Recovery Officer,
   Employees Provident Fund Organization,
   Regional Office,
   65 A, Water Tank Road,
   Nagercoil 629 001
   Kanyakumari District.

+1. C.C. to M/S.K.N.Thampi, Advocate SR.No. 2711
+1. C.C. to M/S.K.Gurunathan, Advocate SR.No. 2986

Order made in
W.P.(MD)No.1593 of 2021
Dated:
02.02.2021

STS
KK/SAR I/03.02.2021/6P/5C