



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)Nos.8256 & 8257 of 2021

and W.M.P(MD)Nos.6235, 6237 & 6238 of 2021

WEB COPY

W.P(MD)No.8256 of 2021:-

A 1160, Manjanaickenpatti Primary
Agricultural Co-operative Bank,
Rep. through its Secretary (In-charge),
Palani Taluk, Dindigul District.

... Petitioner

vs.

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office, Lady Doak College Road,
Chokkikulam,
Madurai - 625 002.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, against the orders of the respondent under Section 14-B in No.TN/RO/MDU/29122/PDC/SPL/14B/2019 dated 09.12.2019 and under Section 7Q in No.TN/RO/ MDU / 29122 / SPL/ PDC /7Q/2019, dated 09.12.2019, on the file of the respondent and quash the same.

For Petitioner : Mr.V.O.S.Kalaiselvam

For Respondent : Mr.A.John Xavier

W.P(MD)No.8257 of 2021:-

A 1160, Manjanaickenpatti Primary
Agricultural Co-operative Bank,
Rep. through its Secretary (In-charge),
Palani Taluk,
Dindigul - 624 614.

... Petitioner

vs.

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office, Lady Doak College Road,
Chokkikulam, Madurai - 625 002.

2.The Recovery Officer,
Employees Provident Fund Organization,
Regional Office,
Lady Doak College Road,
Chokkikulam,
Madurai - 625 002.

... Respondents



Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, against the orders of the respondent under Section 14-B in No.TN/RO/MDU/29122/PDC/14B/2020 dated 20.03.2020 and under Section 7Q in No.TN/RO/MDU/29122/PDC/7Q/2020, dated 20.03.2020 and consequent prohibitory order issued under Section 8F of the EPF Act in No.MD/MDU/PDC/MDMDU0029122000/8F/813/2021 dated 12.03.2021 by the second respondent and quash the same.

For Petitioner : Mr.V.O.S.Kalaiselvam
For Respondents : Mr.A.John Xavier

COMMON ORDER

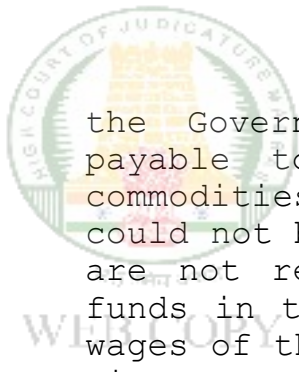
W.P(MD)No.8256 of 2021 is filed seeking a Writ of Certiorari, to quash the order passed by the respondent under Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred as "the EPF Act"), in No.TN/RO/MDU/29122/PDC/SPL/14B/2019, dated 09.12.2019 and under Section 7Q of the Act in No.TN/RO/MDU/29122/SPL/PDC/7Q/2019, dated 09.12.2019.

2.W.P(MD)No.8257 of 2021 is filed seeking a Writ of Certiorari, to quash the order passed by the respondent under Section 14-B of the Act in No.TN/RO/MDU/29122/PDC/14B/2020 dated 20.03.2020 and the order passed under Section 7Q of the Act in No.TN/RO/MDU/29122/PDC/7Q/2020, dated 20.03.2020 and consequent prohibitory order issued under Section 8F of the EPF Act in No.MD/MDU/PDC/MDMDU0029122000/8F/813/2021 dated 12.03.2021 by the second respondent.

3.Mr.A.John Xavier, learned counsel accepts notice on behalf of the respondents.

4.By consent of both parties, these Writ Petitions are taken up for final disposal at the stage of admission itself.

5.The learned counsel appearing for the petitioner submitted that the petitioner Bank is represented by its Secretary (In-charge). The petitioner Bank is functioning only with five employees, as such the EPF Act is not applicable. However, considering the interest and the welfare of the employees, terminal benefits are remitted voluntarily, covering themselves under the EPF Act. The petitioner Bank remitted the contributions regularly, as and when there are funds. However, since the Bank could not be able to run profitably due to adverse policies of the Apex Bank ie., Dindigul District Co-operative Bank, by calculating and recovering monthly interest when the Bank is working out the interest annually, there are continuous imbalance in payment and consequent cover deficit. Further, several loan waivers announced by



the Government are not yet reimbursed. Similarly, the subsidy payable to the fair price shops in respect of the essential commodities supplied to the ration card holders for years, the Bank could not be able to mobilize the funds. Consequently, the employees are not receiving wages to the disputed period, as there are no funds in the Bank. Hence, the petitioner could not deduct from the wages of the employees and also could not remit the contributions on time.

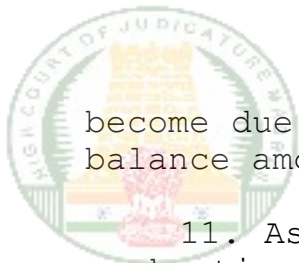
6.The learned counsel appearing for the petitioner further submitted that due to financial crisis, the petitioner could not remit the EPF contribution on the due dates and the same fell into arrears for the period from 08/2016 to 10/2018 and for the period from 11/2013 to 07/2016 respectively. Subsequently, the petitioner remitted all the contributions, but remitted belatedly for the above said periods. The respondent vide notices, dated 26.09.2019 and 19.04.2018, directed the petitioner to appear before the enquiry authority for personal hearing on 06.11.2019 and 25.05.2018 respectively. After receipt of the said notices from the respondent, the petitioner's representative appeared before him on various dates and requested the respondent to waive the damages and accept the interest amount in installments. Without taking into consideration the request of the petitioner, the respondent has passed the impugned orders, dated 09.12.2019 and 20.03.2020 under Section 7Q of the EPF & MP Act, 1952 imposing interest amount of Rs.70,446/- and Rs.1,24,051/- respectively.

7.The learned counsel appearing for the petitioner submitted that the petitioner will pay the interest amount of Rs.70,446/- and Rs.1,24,051/- in twenty equal monthly installments and has also filed an affidavit to that effect on 23.04.2021.

8.The learned counsel appearing for the petitioner further submitted that due to COVID-19 pandemic situation, the appeals were not filed in time and seeks time for filing appeals against the order passed claiming damages under Section 14 B of the Act.

9.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

10.Considering the fact that the petitioner has remitted the entire contributions payable under EPF Scheme and the submissions of the learned counsel appearing on either side, without setting aside the impugned orders of the Assistant Provident Fund Commissioner passed under Section 7Q of the EPF Act, the petitioner is permitted to pay the amount of Rs.70,446/- and Rs.1,24,051/- in 10 equal monthly installments on every 5th day of English Calendar month, starting from 5th June, 2021. The first installment shall commence by making payment on or before 5th June, 2021 and if the petitioner commits default of any two installments, the entire amounts would



become due immediately and the respondent is entitled to recover the balance amount, as per the procedure contemplated under the EPF Act.

11. As far as contention of learned counsel for the petitioner seeks time to file appeal against the order passed under Section 14 B of the Act is concerned, the petitioner is given time till 05.07.2021. The petitioner is directed to file appeals on or before 5th July, 2021. The respondents are restrained from taking any coercive steps in freezing the account of the petitioner till 05.07.2021.

12. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

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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,
Regional Office, Lady Doak College Road,
Chokkikulam, Madurai - 625 002.

2.The Recovery Officer,
Employees Provident Fund Organization,
Regional Office,
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