



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.06.2021

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 9857 of 2021

and

W.M.P. (MD) No. 7582 of 2021

M/s.Etwon India Services (P) Ltd.,
6/1209-B, Mani Towers,
4th Cross Indira Nagar,
Kovilpatti 628 502.

Rep. By its Authorized Signatory

... Petitioner

Vs.

1.The Central Government Industrial
Tribunal Cum Labour Court,
Chennai.

2.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office, Bhavishya Nidi Bhawan,
NGO 'B' Colony,
Tirunelveli - 627 007.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records relating to the impugned order passed by the 1st Respondent in EPFA No.96 of 2020, dated 31.03.2021 and quash the same as illegal insofar as it relates to imposing a condition of depositing a sum of Rs.2,00,000/- is concerned.

For Petitioner : Mr. M. Jerin Mathew

For Respondents : Mr. K. Muralishankar

ORDER

Heard Mr. M. Jerin Mathew, Learned Counsel for the Petitioner and Mr. K. Muralishankar, Learned Standing Counsel, who takes notice for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.



2. The Petitioner has preferred an appeal in EPFA No. 96 of 2020 before the First Respondent under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (hereinafter referred to as the 'EPF Act' for short) against the order No.CB/TNY/89264/14B/86/PDC-2(1)/2020 dated 22.01.2020 passed by the Second Respondent determining the liability of the Petitioner as Rs.11,09,185/- for delayed payment of provident fund dues under Section 14-B of the EPF Act, and stay of that order had also been sought till the disposal of that appeal. The First Respondent by order dated 31.03.2021 granted interim stay in the said appeal subject to deposit of Rs.2,00,000/- with the Second Respondent on or before 31.05.2021. Aggrieved by the said condition imposed for grant of interim stay, the Petitioner has filed the Writ Petition challenging that order passed by the First Respondent.

3. It is contended by Learned Counsel for the Petitioner that presence or absence of *mens rea* and/or *actus reus* would be a determinative factor in imposing damages under Section 14-B of the EPF Act and as the Second Respondent has not adverted to the same in the order under appeal before the First Respondent, the condition to deposit Rs. 2,00,000/- ought not to have been made for grant of interim stay in the appeal. Learned Counsel for the Second Respondent supports the impugned condition in the order passed by the First Respondent.

4. On a careful examination of the rival submissions made, it is noticed from the order dated 22.01.2020 passed by the Second Respondent that the Petitioner had not appeared despite notices issued for various dates on which enquiry was conducted which has led to the passing of that order. In that backdrop, the First Respondent is justified in requiring the Petitioner to deposit a sum of Rs. 2,00,000/- as condition for stay of recovery of the determined sum of Rs. 11,09,185/- in order to balance equities between the parties till the appeal is finally decided on merits and in accordance with law. Viewed from that perspective, the impugned condition in the order dated 31.03.2021 in EPFA No.96 of 2020 passed by the First Respondent does not call for any interference by this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution.

5. Learned Counsel for the Petitioner lastly makes a fervent plea that having regard to the prevalent COVID situation, time may be extended to the Petitioner to make payment of the said amount till 31.08.2021 and he has filed a memo to that effect, which is placed on record. Accepting the same, time is granted to the Petitioner till 31.08.2021 to remit the said amount to the Second Respondent under written acknowledgment to be produced before the First Respondent.



In the result, the Writ Petition is disposed with the aforesaid modification in the impugned order. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm/SRM

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 Central Government Industrial
Tribunal Cum Labour Court,
Chennai.

2.The Assistant Provident Fund Commissioner,
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Tirunelveli - 627 007.

+1 CC to M/s.K.MURALISHANKAR, Advocate (SR-19158[F] dated 10/06/2021)

+1 CC to M/s.M.E.ILANGO, Advocate (SR-19063[F] dated 09/06/2021)

W.P. (MD) No.9857 of 2021

and

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