



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2021

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THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P. (MD) No. 13327 of 2021 and

WMP (MD) .Nos. 11479 & 10311 of 2021

WEB COPY

M/s. Karuppasamy Security Services,
rep. by its Partner,
Mr.D. Shaju.

... Petitioner

Vs.

The Assistant Provident Fund Commissioner,
Employees' Provident Fund organization,
Regional Office,
No.1, Lady Doak College Road,
Chokkikulam,
Madurai-625 002.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in proceedings No.MD/MDU/58363/7A Inquiry / M-04/2020 dated and quash its order dated 24.11.2020 and consequently, direct the respondent to hold afresh enquiry under Section 7A of the EPF and MP Act by giving due opportunity to the petitioner.

For Petitioner	:	Mr.M.N. Ramkumar
For Respondent	:	Mr.V.S.V. Venkateshwaran Standing Counsel

O R D E R

This petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records in proceedings No.MD/MDU/58363/7A Inquiry / M-04/2020 pertaining to the order dated 24.11.2020, quash the same and consequently, direct the respondent to hold afresh enquiry under Section 7A of the EPF and MP Act by giving due opportunity to the petitioner.

2. Heard the learned counsel appearing for the petitioner and the learned Government Counsel appearing for the respondent.

3. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4. The case of the petitioner is that the petitioner is the partner in the petitioner establishment. According to the

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enquiry under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (in short, 'the Act'). The respondent concluded the enquiry on 04.11.2020 and passed the order on 24.11.2020 determining the contribution at Rs.36,94,949/- to be paid by the petitioner in respect of wages, within 15 days from the date of the order copy i.e., the proceedings dated 24.11.2020, failing which, the respondent would initiate recovery proceedings in terms of Section 8 of the Act. Against the aforesaid 7A order, the petitioner has filed a review petition under Section 7B of the Act requesting to review the order passed under Section 7A. According to the petitioner, without providing personal hearing, the respondent sent a communication dated 11.06.2021 stating that the review application was rejected. Therefore, the said impugned order passed by the respondent is liable to be quashed.

5.The learned Standing counsel appearing for the respondent would submit that the respondent has passed the order based on the petitioner's application for review under Sub Section (1) of Section 7B of the Act and the ground raised therein by the petitioner was rejected on merits. Therefore, this Court does not warrant interference with the order passed by the respondent.

6.This Court has considered the rival submissions of the parties concerned and perused the materials available on record. The contention of the petitioner is that the petitioner has submitted a review petition on 28.12.2020 under Section 7B of the Act to review the order passed by the respondent on 24.11.2020 under Section 7 A of the Act. Section 7(B) (4) of the Act reads as follows:

'7B. Review of orders passed under section 7A.-

(1) to (3).

(4) Where the officer is of opinion that the application for review should be granted, he shall grant the same: Provided that,-

(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation."

7. According to the petitioner, there is no reason assigned in the said order for rejecting the review. The petitioner has raised several grounds in the appeal, for review the earlier order passed under Section 7A of the Act. According to the

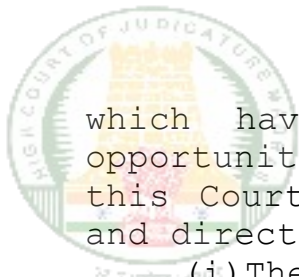


petitioner, Section 7A enquiry held claiming contribution from the petitioner for the period from April 2015 to March 2019. The respondent conducted an enquiry during the period March 2020 to November 2020. During that period, the Government has announced lockdown due to Covid-19 Pandemic situation. Due to lock down, there was no normalcy in the entire State and in such circumstances, the employees of the petitioner could not able to attend enquiry as communicated by the respondent. During the Pandemic period, the said order has been passed under Section 7A of the Act and further he submitted that petitioner's partner's father was died on 02.05.2021. In such circumstances, the petitioner was unable to appear for the enquiry before the respondent to contest the matter.

8. As rightly contended by the learned counsel for the petitioner, during the Pandemic situation, entire country has faced several hardships, almost all proceedings have been postponed by the State Governments and the Central Government Departments, while so, during the said period, the respondent has proceed with the enquiry and passed the impugned order on 24.11.2020 under Section 7A of the EPF & MP Act. The petitioner has enclosed the Death Certificate of its Partner's father in the typed set of papers which shows that he died on 02.05.2021. The petitioner has filed review application before the respondent raising all the grounds especially that the opportunity was not granted to the petitioner to appear before the respondent in view of the provisions under the Act. Therefore, the aforesaid impugned order passed by the respondent under Section 7A of the EPF & MP Act is liable to be set aside since without considering the said grounds, the respondent has passed the order by rejecting the claim of the petitioner.

9. Therefore, considering the fact that the impugned order has been passed under Section 7(A) of the Act and subsequently, the petitioner has also filed a review application to re-consider the order passed under Section 7(B) of the Act and when such an application is pending, another pathetic situation for the petitioner that petitioner's partner's father one Durairaj was died on 02.05.2021. Therefore, in these circumstances, the petitioner was unable to prosecute the review application. But the respondent has not provided sufficient opportunity to the petitioner to substantiate all the grounds raised in the review application and to seek for setting aside the order passed under Section 7(A) of the EPF & MP Act.

10. This Court has considered the submissions made by the learned counsel on either side and it is seen that the respondent cannot have any serious dispute on the said fact. The respondent has not passed the order by taking into consideration the grounds



which have been raised by the petitioner and providing an opportunity to the petitioner, thus, in the interest of justice, this Court feels it appropriate to set aside the impugned order and directs the respondent as under:

(i)The respondent shall consider the petitioner's review application filed under Section 7(B) of the EPF Act in accordance with law and the Rules.

(ii)The respondent shall consider the grounds raised by the petitioner and pass a reasoned/speaking order under Section 7(B) of the Act.

(iii)The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. It is needless to say that the an opportunity of personal hearing be granted to the petitioner.

11.The Writ Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

Assistant Provident Fund Commissioner,
Employees Provident Fund organization,
Regional Office,
No.1, Lady Doak college Road,
Chokkikulam,
Madurai.-625 002.

+1 CC to M/s.M.N.RAMKUMAR, Advocate (SR-26598[F] dated 18/08/2021)

W.P.(MD) No.13327 of 2021 and
WMP(MD) .Nos.10311 of 2021
16.08.2021

AC (CO)

SB(13.09.2021) 4P 3C