



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2021

C O R A M

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W. P. (MD) No. 11571 of 2014

and

M.P. (MD) Nos. 1 and 2 of 2014

WEB COPY

M/s. Chakravarthy Theatres,
Chettikulam Junction
Nagercoil,
Kanyakumari District,
represented by its Proprietor
Mr. Joy Raja

... Petitioner

-vs-

The Assistant Provident Fund Commissioner,
The Assistant Provident Fund Office,
Employees Fund Organization,
Sub Regional Office,
66, Water Tank Road,
Nagercoil-629 001,
Kanyakumari District.

... Respondent

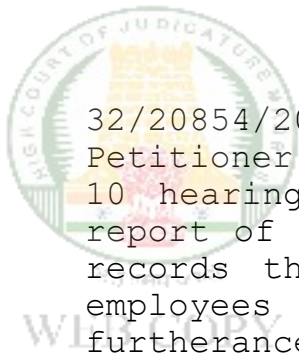
PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for records relating to impugned order passed by the respondent on 25.03.2014 in Proceedings No. TN/NGL/20854/Enf(32)2013 and the consequential order dated 12.03.2014 in TN/NGL/20854/Enf/Circle/32/8F/2012 and quash the same and direct the respondent to take the petitioner application dated 17.03.2014 on file either as review under Section 7-B or as an application under Section 7-A(4) of the Employees Provident Fund and Miscellaneous Provision Act of 1952.

For Petitioner	: Mr. M. Ramkumar
For Respondent	: Mr. K. Gurunathan

O R D E R
(through video conference)

Heard Mr. M. Ramkumar, Learned Counsel appearing for the Petitioner and Mr. K. Gurunathan, Learned Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent conducted an enquiry under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF Act' for short) for the period from October 2012 to April 2013 in respect of the establishment of the Petitioner and by Order in File No. TN/NGL/Enf/Circle



32/20854/2013 dated 30.01.2014 arrived at the conclusion that the Petitioner had not produced any records despite summons issued for 10 hearings and as such, it was determined on the basis of the report of the Enforcement Officer and other available documents and records that a sum of Rs. 77,035/- was payable in respect of 7 employees for the contribution towards provident fund dues. In furtherance thereto, the Respondent passed another Order No. TN/NGL/20854/Enf/Circle 32/8F/2012 dated 12.03.2014 for the recovery of the aforesaid provident fund dues by attachment of the bank account of the Petitioner with Axis Bank, Nagercoil under Section 8-F of the EPF Act. The Petitioner thereafter made an application for review dated 17.03.2014 invoking Section 7-B of the EPF Act with certain documents, but the Respondent by Order No. TN/NGL/20854/Enf (32)2013 dated 25.03.2014 rejected the same for the following reasons:-

- "(i) The review application is not in prescribed format.*
- (ii) The review application is not filed by the employer of the establishment.*
- (iii) Sufficient chances were already afforded to produce the documents/records during the course of inquiry under Section 7A of the Act and the Employer has not attended the hearing with the summoned records."*

Aggrieved thereby, the Petitioner has assailed the aforesaid orders dated 12.03.2014 and 25.03.2014 and has sought for consequential direction to the Respondent to treat the application dated 17.03.2014 either as a Review Application under Section 7-B of the EPF Act or as an application to set aside the *exparte* order under Section 7-A(4) of the EPF Act, in this Writ Petition.

3. The question that arises for consideration in this Writ Petition is whether the Respondent is justified in rejecting the application for review filed by the Petitioner under Section 7-B of the EPF Act?

4. Learned Counsel for the Respondent in justification of the refusal of the Respondent to entertain the application for review, points out that Form 9 of the Employees' Provident Fund Scheme, 1952, prescribes the format of the application for review under Section 7-B of the EPF Act and the application dated 17.03.2014 submitted by the Petitioner does not satisfy that requirement. It is further contended that the person who has signed the application dated 17.03.2014 as authorized signatory of the Petitioner has not submitted any proof authorizing him to do so and in the absence thereof, the application for review cannot be accepted. It is further highlighted that the order dated 12.03.2014 passed under Section 7-A of the EPF Act clearly records that the Petitioner has been granted sufficient opportunities to produce documents, but he had not produced the same despite various summons issued in that regard.

5. At this juncture, it would be useful to refer to dictum laid down by the Hon'ble Supreme Court of India in **N.Balaji -vs- Virendra Singh** [(2004) 8 SCC 312], where it has been observed as follows:-

"10. In the matter of applicability of the procedural rigours the Constitution Bench of this Court in **Sardar Amarjit Singh Kalra -vs- Pramod Gupta** [(2003) 3 SCC 272] has observed that laws of procedure are meant to regulate effectively, assist and aid the object of substantial and real justice and not to foreclose even an adjudication on the merits of substantial rights of citizen under personal, property and other laws. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. It follows from the decision by the Constitution Bench that the procedure would not be used to discourage the substantial and effective justice but would be so construed as to advance the cause of justice...."

Further, the Hon'ble Supreme Court of India in **Uday Shankar Triyar -vs- Ram Kalewar Prasad Singh** [(2006) 1 SCC 75], has elaborated the effect of defective presentation of papers while instituting legal proceedings under the Code of Civil Procedure, 1908, and held as follows:-

"15. It is, thus, now well settled that any defect in signing the memorandum of appeal or any defect in the authority of the person signing the memorandum of appeal, or the omission to file the vakalatnama executed by the appellant, along with the appeal, will not invalidate the memorandum of appeal, if such omission or defect is not deliberate and the signing of the memorandum of appeal or the presentation thereof before the appellate court was with the knowledge and authority of the appellant. Such omission or defect being one relatable to procedure, can subsequently be corrected. It is the duty of the office to verify whether the memorandum of appeal was signed by the appellant or his authorised agent or pleader holding appropriate vakalatnama. If the office does not point out such defect and the appeal is accepted and proceeded with, it cannot be rejected at the hearing of the appeal merely by reason of such defect, without giving an opportunity to the appellant to rectify it. The requirement that the appeal should be signed by the appellant or his pleader (duly authorised by a vakalatnama executed by the appellant) is, no doubt, mandatory. But it does not mean



that non-compliance should result in automatic rejection of the appeal without giving an opportunity to the appellant to rectify the defect. If and when the defect is noticed or pointed out, the court should, either on an application by the appellant or suo motu, permit the appellant to rectify the defect by either signing the memorandum of appeal or by furnishing the vakalatnama. It should also be kept in view that if the pleader signing the memorandum of appeal has appeared for the party in the trial court, then he need not present a fresh vakalatnama along with the memorandum of appeal, as the vakalatnama in his favour filed in the trial court will be sufficient authority to sign and present the memorandum of appeal having regard to Rule 4(2) of Order 3 CPC, read with Explanation (c) thereto. In such an event, a mere memo referring to the authority given to him in the trial court may be sufficient. However, filing a fresh vakalatnama with the memo of appeal will always be convenient to facilitate the processing of the appeal by the office.

16. An analogous provision is to be found in Order 6 Rule 14 CPC which requires that every pleading shall be signed by the party and his pleader, if any. Here again, it has always been recognised that if a plaint is not signed by the plaintiff or his duly authorised agent due to any bona fide error, the defect can be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court by permitting appropriate amendment, when such defect comes to its notice during hearing.

17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

- (i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;
- (ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

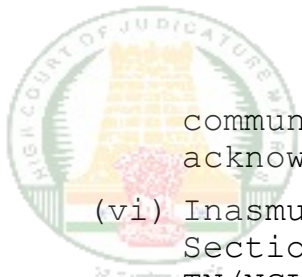


- (iii) where the non-compliance or violation is proved to be deliberate or mischievous;
- (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;
- (v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant."

There cannot be any doubt that the aforesaid principles would squarely apply to the proceedings under the EPF Act as well. If the application for review filed by the Petitioner had not been filed in the prescribed format with the authorization of the signatory, the proper recourse would have been only to return the same to the Petitioner requiring the review application to be re-submitted complying with those requirements. Likewise, the Petitioner would have to be afforded an opportunity of personal hearing after taking the application for review on record to explain his position that the new materials or evidence were not within his knowledge earlier, before arriving at any conclusion in that regard. In such circumstances, the supercilious manner in which the application filed by the Petitioner was straightaway rejected by the Respondent by impugned Order No. TN/NGL/20854/Enf(32)2013 dated 25.03.2014 at threshold without carrying out the aforesaid exercise cannot be sustained.

6. The result of the foregoing discussion is that the Writ Petition is disposed on the following terms:-

- (i) the impugned Order No. TN/NGL/20854/Enf(32)2013 dated 25.03.2014 passed by the Respondent rejecting the application made by the Petitioner under Section 7-B of the Act, is quashed;
- (ii) the Petitioner shall re-submit the application for review in the prescribed format with authorization of the signatory and the supporting materials on or before 30.09.2021 along with a copy of this order;
- (iii) if it is found that the Petitioner has not satisfied the prescribed requirements for entertaining the review application, the defects in that regard shall be informed in writing to him requiring the same to be furnished within a time frame of not less than 10 working days;
- (iv) in the event of the Respondent not being satisfied with the compliance of the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner to explain his position in that regard;
- (v) the Respondent shall pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and



communicate the decision taken to the Petitioner under written acknowledgment;

(vi) Inasmuch as the Petitioner has filed the application under Section 7-B of the EPF Act for review of the Order in File No. TN/NGL/Enf/Circle 32/20854/2013 dated 30.01.2014 passed by the Respondent, the proceedings initiated vide Order No. TN/NGL/20854/Enf/Circle 32/8F/2012 dated 12.03.2014 under Section 8-F of the EPF Act for recovery in furtherance thereto shall be kept in abeyance and further course of action shall depend upon the outcome in that Review Application;

(vii) consequently, the connected Miscellaneous Petitions are closed; and

(viii) there shall be no order as to costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2021

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

The Assistant Provident Fund Commissioner,
The Assistant Provident Fund Office,
Employees Fund Organization,
Sub Regional Office,
66, Water Tank Road,
Nagercoil-629 001,
Kanyakumari District.

+1 CC to M/s.K.GURUNATHAN, Advocate (SR-20234[F] dated 25/06/2021)

W. P. (MD) No. 11571 of 2014
24.06.2021

SJ(CO)

KB(21.09.2021) 6P 3C