



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2021

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. No. 6049 of 2014

The Commissioner,
Trichirappalli City Corporation,
Trichirappalli.

... Petitioner

-vs-

1.The Secretary,
Department of Ministry of Labour and Employment,
New Delhi.

2.The Central Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Bhavishya Nadhi Bhawan,
14, Bhikaji Cama Place,
New Delhi - 110 066.

3.The Commissioner,
Employment Provident Fund Organisation,
Trichy Region,
Trichy.

4.The Assistant Provident Fund Commissioner,
Employment Provident Fund Organisation,
Trichy Region,
Trichy.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned notification dated 08.01.2011 passed by the First Respondent and impugned Orders in No.ENF.B3/TN/SRO-TRY/81643/2012-13, dated 30.08.2012 and No.CB/TRY/ENF.B3/81643/2014 dated 05.02.2014 passed by the Third and Fourth Respondent respectively and quash same.

For Petitioner	:	Mr. N. S. Karthikeyan
For Respondent 1	:	Mr. P. Subbiah
		Central Government Counsel
For Respondents 2 to 4	:	Mr. M. Palanimuthu
For Respondents 5 & 6	:	Mr. M. Jayakumar
		Additional Government Pleader



O R D E R
(through video conference)

The Central Government by Notification No. S.O. 30(E) dated 08.01.2011 in exercise of the powers conferred by Section 1(3)(b) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as 'the Act' for short), specified the Municipal Councils and Municipal Corporations constituted under Article 243-Q(1)(b) and (c) of the Constitution of India employing 20 or more persons as a class of establishments to which that Act shall apply with effect from the date of its publication in the Official Gazette. The Petitioner, viz., Trichirappalli City Corporation, which is a Municipal Corporation in terms of Article 243-Q(1)(b) of the Constitution of India has filed this Writ Petition challenging the aforesaid notification dated 08.01.2011 issued by the First Respondent contending that there are separate provisions for payment of provident fund to its employees governing it which are still in force.

2. In this context, reference must be made to Section 1(3) of the Act which itself provides that it is subject to the provisions of Section 16 of the Act. The relevant portions of Section 16(1)(b) and (c) of the Act are extracted below:-

"16. Act not to apply to certain establishments-(1)

This Act shall not apply-

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits."

It would be evident on a reading of the aforesaid statutory provision that an establishment stands automatically exempted from the provisions of the Act, if the following twin conditions are satisfied:-

(i) The establishment must be either "belonging to" or "under the control of" the Central or the State Government, or must have been "set up" under any Central, Provincial or State Act; and

(ii) The employees of such an establishment should be entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government or



under the Act under which the establishment has been created, governing such benefits."

This position of law has been highlighted by the Hon'ble Supreme Court of India in the decision in **Yeshwant Gramin Shikshan Sanstha -vs- Assistant Provident Fund Commissioner** [(2017) 5 SCC 579] and **Pawan Hans Limited -vs- Aviation Karmachari Sanghatana** (Order dated 17.01.2020 in Civil Appeal No.353 of 2020).

3. Though the Petitioner has claimed that it has a separate provident fund scheme for the persons working under it as already observed, requisite details and supporting materials have not been produced in that regard, in order to ascertain whether the Petitioner would be entitled to the benefit of automatic exemption in terms of the aforesaid statutory provisions.

4. When that shortcoming was pointed out, Learned Counsel for the Petitioner seeks time to file an additional affidavit to explain the same along with relevant documents to substantiate that claim, after serving a copy to the Learned Counsel for the Respondents.

Post the matter along with W. P. (MD) Nos. 17380 and 18805 of 2013, 2455 of 2014 and 19748 of 2016 on 15.07.2021.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

- 1.The Commissioner,
Trichirappalli City Corporation,
Trichirappalli.
- 2.The Secretary,
Department of Ministry of Labour and Employment,
New Delhi.
- 3.The Central Provident Fund Commissioner,
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Trichy.

<https://hcservices.ecourts.gov.in/hcservices/>



5.The Assistant Provident Fund Commissioner,
Employment Provident Fund Organisation,
Trichy Region,
Trichy.

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Copy to

The Section Officer,
Writ(Posting) Section,
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.N.S.KARTHIKEYAN, Advocate (SR-18460[F] dated
04/05/2021)

+1 CC to M/s.SPL GP (SR-18465[F] dated 04/05/2021)

W.P. No. 6049 of 2014
Dated : 30.04.2021

KB(30.06.2021) 4P 9C