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W.P.No.17185 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.17185 of 2022
and WMP.No.16468 of 2022

The Commissioner,
Nelliyalam Municipality,
Nelliyalam Pandalur,
Nilgiris District-643 233.

.. Petitioner

vs.

1.The Regional Provident Fund Commissioner-II,
Employees Provident Fund Organization,
P.B. No.3875, Dr.Balasundaram Road,
Coimbatore-641 018.

2.Assistant Provident Fund Commissioner (Compliance),
Regional Office, Bhavishya Nidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore-641 018.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the third respondent in EPFA No.63/2021 dated 02.02.2022 and consequential proceedings of the second respondent in CB/CBE/ENF/CC-18/152948418F/2022 dated 07.03.2022, quash the same and consequently direct the respondents 1 and 2 to refund the sum of Rs.35,17,848/- recovered from the account of the petitioner for the contribution that are under challenge from the petitioner and restore the appeal for fresh hearing before the third respondent.



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For Petitioner

: Mr.P.Srinivas

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For Respondents

: Mr.K.Prabakar,
Standing Counsel for EPF

ORDER

The petitioner, challenging the impugned order of the Employees Provident Fund Appellate Tribunal, Chennai in EPFA No.63/2021 dated 02.02.2022 in and by which the appeal filed by the petitioner was dismissed, has filed the present writ petition.

2. It is the case of the petitioner that the first respondent seems to have undertaken proceedings under Section 7A of the Employees Provident Fund Act and the second respondent has issued show cause notice to the petitioner for hearing and after various hearings, the respondent has passed an order demanding a sum of Rs.35,17,848/-. The petitioner has challenged the same by filing an appeal before the appellate forum in EPFA No.63/2021, wherein a conditional order was passed to deposit 40% of the due amount and the appeal was posted on 16.12.2021. Thereafter, the appeal was listed on 02.02.2022 and the same was dismissed for non compliance of the conditional order. Challenging the same, the petitioner has filed the present writ petition.



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3. According to the petitioner, pursuant to the impugned order, the second respondents has sent a communication to the State Bank of India, Gudalur and requested to transfer the aforesaid demand amount of Rs.35,17,848/- to the respondent account. According to the petitioner, the respondents have not followed the procedure as contemplated under the Rules by issuing the recovery certificate and now the entire amount has been recovered from the petitioner account and therefore, prays for setting aside the impugned order and remanding the matter back to the appellate Tribunal to consider afresh, with liberty to raise all the grounds, before the appellate Tribunal.

4. The learned Standing Counsel for the respondents Corporation has not disputed the said fact that the demand amount has been recovered from the petitioner and they have followed the procedures as contemplated under the rules.

5. However, disputed question of facts cannot be gone into in a writ petition. Considering the fact that the respondents have recovered the entire amount from the petitioner Municipality, no prejudice would be caused to the



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respondents in remand the matter to the Appellate Tribunal for fresh consideration.

6. In the light of the above, the writ petition stands allowed and the impugned order of the Employees Provident Fund Appellate Tribunal, Chennai in EPFA No.63/2021 dated 02.02.2022 is set aside and the matter is remitted back to the said Appellate Tribunal to consider the appeal afresh. Since the petitioner Municipality has complied with the pre-conditional deposit amount under Section 7O of the EPF Act, the Appellate Tribunal is directed to number the appeal if it is in order and pass orders in accordance with law, as expeditiously as possible. It is also open to the petitioner to seek refund of the amount before the Appellate Tribunal and to agitate all the grounds raised in the writ petition before the Appellate Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
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To

1. The Regional Director,
E.S.I. Regional Corporation (Tamil Nadu),
143, Sterling Road, Chennai-600 034.
2. The Deputy Director,
E.S.I. - Regional Corporation (Tamil Nadu),
Panchdeep Bhawan, 143, Sterling Road,
Chennai-600 034.
3. The Recovery Officer,
E.S.I. - Regional Corporation (Tamil Nadu),
Panchdeep Bhawan, 143, Sterling Road,
Chennai-600 034.

D.KRISHNAKUMAR, J.



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