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W.P. No. 33314 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 33314 of 2016
and
W.M.P. No.28778 of 2016**

SMS College of Arts and Science,
rep. by Manager HR,
Siruvani Main Road,
Perur Post,
Coimbatore.

... Petitioner

-VS-

1. Employees' Provident Fund Organization,
Regional Office,
Bhavishya Nidhi Bhavan,
P.B. No. 3875, Dr. Balasundaram Road,
Coimbatore – 641 018.
2. The Recovery Officer,
Regional Office,
Bhavishya Nidhi Bhavan,
P.B. No. 3875, Dr. Balasundaram Road,
Coimbatore – 641 018.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings No. TN/RO/CBE/RECOVERY/72233/2016 of the Second Respondent dated 29.01.2016 and quash the order passed therein and direct the Respondent to return the amount already withdrawn from their account.



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For Petitioner : Mr. T.Thiageswaran
for M/s. Warron & Sairam

For Respondents : Mrs. R.Meenakshi

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ORDER

Heard Mr. T.Thiageswaran, Learned Counsel for the Petitioner and Mrs. R.Meenakshi, Learned Counsel for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Assistant Provident Fund Commissioner, Coimbatore by Order No. TN/RO/CBE/72233/ENF/CC-12/2014 dated 19.05.2014 had ascertained the contribution towards provident fund dues payable by the Petitioner for the period from December 2011 to March 2013 under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act' for short) and the Petitioner does not dispute the receipt of its copy. The Petitioner was entitled to prefer appeal against that order under Section 7-I of the Act within a period of 60 days from the date of its receipt in terms of Rule 7(2) of the Employees' Provident Fund Appellate Tribunal (Procedure) Rules, 1997, before the Appellate Authority, who has been empowered to condone delay in filing such appeal for an extended period of 60 days, if sufficient cause for not preferring appeal within that period is



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made out. As no such appeal had been filed, the said order has attained finality.

Subsequently, the Second Respondent by Order No. TN/RO/CBE/RECOERY/72233/2016 dated 29.01.2016 initiated recovery proceedings under Section 8-B of the Act, which is alone challenged by the Petitioner in this Writ Petition.

3. It is pointed out by Learned Counsel for the Respondents, relying on the decisions of this Court in ***Saidapet Co-operative Milk Producers Society Ltd., -vs- Deputy Director, ESI Corporation Regional Officer (Tamil Nadu)*** (Order dated 04.08.2017 in C.M.A. No. 469 of 2015) and ***M/s. Hexaware Technology -vs- Commissioner, Employees State Insurance Corporation, Chennai*** (Order dated 30.10.2019 in W.P. No. 29677 of 2018), that in the absence of any challenge to that parental order determining liability, the Writ Petition cannot be prosecuted challenging the consequential order of recovery, as in this case. The said well founded submission made on behalf of the Respondents deserves acceptance. That apart, no infirmity has been shown in the decision-making process of the Third Respondent while passing the impugned order requiring interference by this Court in the exercise of the discretionary powers of judicial review under Article 226 of the Constitution.



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4. In the result, the Writ Petition is dismissed. Consequently, the connected

Miscellaneous Petition is closed. No costs.

29.06.2022

skr

Index: Yes/No

Note: Issue order copy by 13.07.2022.

To

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P.D. AUDIKESAVALU, J.

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