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W.P.Nos. 38932 & 38933 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 38932 & 38933 of 2016

and

W.M.P.Nos. 33349 & 33350 of 2016

M/s. Uthangarai Agri Pro Co-Op-
Marketing Society,
Represented by its Director,
Uthangarai,
Kishnagiri – 635 207

... Petitioner in both WPs

Vs.

1. The Presiding Officer,
Employees Provident Fund,
Appellate Tribunal,
Bengaluru.

...First respondent in
both WPs

2. The Regional Provident Fund Commissioner,
Anna Salai,
Salem – 636 004.

... Second respondent in
W.P.No. 38932 of 2016

3. The Assistant Provident Fund Commissioner,
Anna Salai,
Salem – 636 004.

... Second respondent in
W.P.No. 38933 of 2016

4. The Bank Manager,
Dharmapuri District Central
Co-operative Bank Branch, Uthangarai.

... Third Respondents
in both WPs.



Prayer in both WPs : Writ Petition filed Under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Appeal No. A/TN-92/2016, dated 27.10.2016 and quash the same and consequently, directing the first respondent to condone the delay and take the appeal for admission on merits.

For Petitioner : Mr. B. Gopalakrishnan

For Respondents : Mrs. R. Meenakshi
for R1 and R2
Mr. L.P. Shanmugasundaram
for R3

ORDER

The order dated 27.10.2016 passed by the first respondent under Sections 14-B and 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is under challenge in the present writ petition.

2. The writ petitioner is the quasi Government body registered under Co-operative Marketing Societies Act, 1904.

3. The learned counsel for the writ petitioner-Society states that the writ petitioner-Society is running at loss and they are not in a position to pay the contributions immediately. However, the writ petitioner-Society is



unable to establish that the writ petitioner-Society is a Sick Unit under the provisions of the relevant Statute. In the absence of establishing that an establishment is a Sick Unit, already declared under the Statute, the Court cannot grant any waiver of the statutory contributions or the consequential interest and the damages.

5. This apart, the order passed under Sections 14-B and 7-Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is an appealable order and an appeal is provided under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Thus, the writ petitioner-Society ought to have preferred an appeal before the Appellate Tribunal constituted under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

6. Admittedly, no such appeal has been filed by the writ petitioner-Board. Those disputed facts and issues raised with reference to the calculation or otherwise, cannot be adjudicated in a writ proceeding. All such disputed facts are to be adjudicated with reference to the original documents as well as the evidences available and such an exercise cannot be done by the High Court under Article 226 of the Constitution of India.



7. As far as the appeal is concerned, the writ petitioner-Society had not filed any appeal within the time limit prescribed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and therefore, they themselves have chosen not to prefer any appeal and such a right cannot be now restored by the High Court in view of the elaborate judgment delivered by this Court in WP No.28363 of 2013 dated 06.11.2019, wherein this Court has held that the uncondonable delay cannot be condoned by the High Court, enabling the aggrieved person to prefer an appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and under these circumstances, this Court cannot give any liberty for the purpose of filing an appeal under Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Accordingly, the writ petitioner-society is bound to pay the amounts as calculated by the respondent-organisation in the impugned proceedings and accordingly, settle the said amount as expeditiously as possible.



8. With the above observations, the writ petitions stand dismissed.

However, there shall be no order as to costs.

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mrn

Index : Yes / No

Speaking order / Non-Speaking order

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S.M.SUBRAMANIAM, J.

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