



W.P.No.19007 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.19007/2022 and WMP.No.18328/2022

The Commissioner,
Pollachi Municipality,
No.108, Palghat Road,
Pollachi-642 001,
Coimbatore District.

... Petitioner

Versus

The Regional Provident Fund Commissioner-II,
Dr.Balasubramanian Road,
Coimbatore-641 018.

... Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Central Government Industrial Tribunal-cum-Labour Court, Chennai, relating to its order dated 12.05.2022 in E.P.F. Appeal No.152 of 2019 and quash the same insofar as it directed the petitioner to deposit 35% of the dues as pre deposit of Rs.29,51,981/- and consequently, direct it to grant full waiver of pre deposit as prayed for.

For Petitioner : Mr.B.Anand



W.P.No.19007 of 2022

For Respondent : Mr.P.K.Paneer Selvam

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ORDER

This Writ Petition has been filed challenging the impugned order dated 12.05.2022 passed by the respondent in E.P.F. Appeal/Waiver Application No.152/2019, directing the petitioner to pay 35% of the impugned demand of Rs.84,34,232/- towards EPF contributions instead of 75% which is as per the provisions of 7 (O) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

2. The petitioner categorically contends that they are not liable to pay EPF contributions of Rs.84,34,232/- as determined under Section 7-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. A finding has been given by the respondent under the impugned order dated 12.05.2022 passed in EPFA No.152/2019 that the appellant (petitioner herein) has made out a prima facie arguable case, but the issues raised by the appellant (petitioner herein) can only be decided after hearing both the parties. Under the impugned order, the mandatory statutory pre-deposit of 75% of the amount for filing the statutory appeal has been reduced to 35%. The petitioner contends that they are not in a position to pay the said amount by giving the following reasons:

2/6



W.P.No.19007 of 2022

a. They are incurring regular expenditure for various civic amenities and for maintenance of public services; and

b. The main source of their income is collection of property tax and the income earned from this only is used to meet the expenses and hence the petitioner is facing deficit budget and the petitioner mostly depends upon Government loans. The petitioner has no source of financial support to meet the demand to be incurred under the impugned order.

3. The petitioner further contends that as per the determined amount under Section 7A of the EPF Act, the petitioner was called upon to pay Rs.84,34,232/-. If 35% of the said amount is directed to be deposited, it will work out to Rs.29,51,981/-. The petitioner categorically contends that they are not in a position to pay the said amount, due to financial constraints.

4. Normally, this Court, while exercising powers under Article 226 of the Constitution of India, will not interfere with the discretionary order passed by the respondent as per the provisions of Section 7 (O) of the EPF Act. But here is a case where the respondent has given a finding that the petitioner has got arguable case in the statutory appeal. When the petitioner has got arguable case, on a prima facie consideration, the respondent ought to have considered the difficulties expressed by them in their affidavit filed in



W.P.No.19007 of 2022

support of the Waiver Application. However, as seen from the impugned order, the financial difficulties expressed by them have not been considered. Being a huge amount determined by the authority under Section 7-A of the EPF Act and after giving due consideration to the difficulties expressed by the petitioner in the affidavit filed in support of the Waiver Application before the respondent as well as in the affidavit filed in support of this Writ Petition, this Court is of the considered view that pre-deposit amount payable by the petitioner will have to be reduced further from 35% as per the impugned order to 15% due to the financial difficulties expressed by the petitioner. Being a Municipality doing public services, this Court is interfering with the order passed by the respondent and this order cannot be treated as a precedent for other matters.

5. For the foregoing reasons, the impugned order dated 12.05.2022 is hereby modified by directing the petitioner to pay 15% of the determined amount under Section 7A of the EPF Act instead of 35% fixed by the respondent and on payment of the said amount within a period of one week from the date of receipt of a copy of this Order, the respondent shall entertain the statutory appeal and pass final orders on merits and in accordance with law, even though, the learned Standing Counsel for the respondent vehemently opposes any interference by this Court as he



W.P.No.19007 of 2022

submitted that once a discretion has been exercised by the respondent, the question of interference by this Court under Article 226 of the Constitution of India will not arise.

With the aforesaid modification, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

Speaking Order/Non-Speaking Order

To

The Regional Provident Fund Commissioner-II,
Dr.Balasubramanian Road,
Coimbatore-641 018.



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W.P.No.19007 of 2022

ABDUL QUDDHOSE, J

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W.P.No.19007 of 2022

27.10.2022