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W.P.No.30406 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.30406 of 2022 &
W.M.P.No.29837 of 2022

The Management of
Vellore District Cooperative Printing Works Ltd,
Rep. by its Managing Director,
Gopal Nilayam
No.1, Veppamara Street Velapadi,
Vellore.

... Petitioner

Vs

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
S-1 TNHB Phase- III,
Sathuvachari, Vellore.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to Call for the records relating to the impugned order passed by the Respondent in proceedings No.TB / VLR /1408 / PDC / 14B/ 2022 / 1547 dated 20.07.2022 read with the proceedings in No.TB/ VLR / 1408 / PDC/ 7Q/ 2022 dated 20.07.2022 and quash the same and consequently remand back to the Respondent to hold fresh enquiry in accordance with law.



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For Petitioner

...

Mr.L.P.Shanmugasundaram

For Respondent

...

Mr.P.K.Panneer Selvam,
Standing Counsel

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ORDER

This writ petition has been filed challenging the impugned orders both dated 20.07.2022. One of the impugned orders has been passed in accordance with section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act (hereinafter referred to as "EPF & MP Act") directing the petitioner/Management to pay damages for non payment of EPF contributions and the other impugned order has been passed under section 7Q of the EPF & MP Act directing the petitioner to pay interest for the delayed payment of EPF contributions.

2. Mr.P.K.Panneer Selvam, learned standing counsel accepts notice on behalf of the respondent. By consent of both parties, this writ petition is taken up for final disposal in the admission stage itself.

3. The petitioner has primarily challenged the impugned orders on the ground of violation of principles of natural justice. The impugned orders are



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exparte orders passed by the respondent. The petitioner contends that the procedure for holding a proceeding warrants calling for explanation from the petitioner and giving them reasonable opportunity in the enquiry proceedings. The petitioner contends that the copies of the documents, based on which, the proceedings were initiated against them were not furnished, despite the written request made by them.

4. The petitioner also contends that the respondent has issued summons and asked them to pay EPF contributions for the period from 07.04.1999 to 12.01.2009, after a lapse of almost 23 years, without any authenticated documents. According to the petitioner, on the date when they were set exparte ie. on 19.07.2022, they did not have proper Internet facility and only for the said reasons, they did not attend the virtual hearing. The petitioner also contends that the working sheet provided by the respondent does not disclose, as to how the petitioner is liable to pay the arrived amount. According to the petitioner, unilaterally the impugned orders have been passed calling the petitioner to pay interest and damages.



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5. Heard Mr.L.P.Shanmugasundaram, learned counsel for the petitioner and Mr.P.K.Panneer Selvam, learned Standing Counsel appearing for the respondent.

6. Learned counsel for the petitioner reiterated the contents of the affidavit filed in support of this writ petition.

7. Per contra, learned standing counsel appearing for the respondent would submit that since this writ petition has been filed beyond the prescribed time fixed for a statutory appeal which is 120 days in total, this writ petition is not maintainable. He would also submit that the petitioner having failed to exercise his statutory right of appeal as provided under the EPF Act, as against the impugned orders, this writ petition is not maintainable.

8. In support of his submissions, learned standing counsel for the respondent drew the attention of this Court to the following authorities:



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(a) A decision of the Hon'ble Supreme Court in the case Assistant Commissioner (CT) LTU, Kakinada & Others vs. M/s.Glaxo Smith Kline Consumer Health Care Limited reported in 2020 (19) SCC 681; and

(b) A decision of the Hon'ble Supreme Court in the case of Arcot Textile Mills Limited vs. Regional Provident Fund Commissioner and Others.

9. Relying upon the aforesaid authorities, the learned standing counsel for the respondent would submit that the present writ petition is not maintainable on the ground that the maximum time limit for preferring an appeal under the EPF Act for the petitioner as against the impugned orders is only 120 days and there is no provision for condoning any further delay. Therefore, according to him, as per the aforesaid decisions of the Hon'ble Supreme Court, this Court cannot entertain this writ petition, in view of the fact that the petitioner has filed this writ petition only on 10.11.2022, i.e., beyond the period of 120 days from the date of the impugned orders.



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10. It is settled law that when there is violation of principles of natural justice, even though there is a statutory appellate remedy available, this Court can entertain a writ petition. However, the same is disputed by the learned standing counsel appearing for the respondent.

11. In both the aforesaid authorities relied upon by the learned standing counsel appearing for the respondent, the question involved was whether the writ petition is maintainable when the statutory period for preferring the statutory appeal has already got expired and only under those circumstances, the Hon'ble Supreme Court had held the writ petition not to be maintainable as the writ petition was filed beyond the prescribed period fixed under the statute for preferring the statutory appeal.

12. In the instant case, the petitioner has challenged the impugned orders only on the ground of violation of principles of natural justice and they seek for reconsideration of the matter after affording a fair hearing to them.



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WEB COPY 13. The details of the hearings in the impugned proceedings are as follows:

Hearing date	Details
19.04.2022	The petitioner had appeared before the respondent in person and asked the details of notice
16.05.2022	On the said dated, the Central Government declared holiday on account of Buddha Poonima
13.06.2022	The case was called on, the Secretary of the petitioner society had appeared and requested to file written statement and asked the documents
04.07.2022	On that day, the assessing officer was on leave and the case was not heard
19.07.2022	The case was called virtually by using "CISCO WEBEX" Note:-The Society does not have any internet facility. There was difficulty to handle the virtual hearing. The Personnel of the petitioner society are not well versed in the usage of Computer Technology to download the Application of 'Cisco Webex' and thereafter to access the linkage for attending the virtual hearing conducted by the respondent organization on 19.07.2022. Hence, they could not appear virtually
20.07.2022	Impugned Exparte order passed without hearing the petitioner.



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14. As seen from the aforementioned hearings, the petitioner had appeared before the respondent through his authorised representatives on 19.04.2022 & 13.06.2022. On 16.05.2022 which is one of the hearing dates, the Central Government has declared the said date as a holiday on account of Budha Poornima. On 04.07.2022, which is also one of the dates of hearing, the assessing officer was on leave and the case was not heard. On 19.07.2022, being the last date of hearing, the said hearing was held virtually through "Cisco Webex". The petitioner contends that they did not have internet facility on that date. The petitioner also contends that the personnel of the petitioner society was also not well versed in the usage of computer technology to download the application of "Cisco Webex" and thereafter, to access the link to attend the virtual hearing conducted by the respondent on the very same day. According to them, only under those circumstances, they did not attend the hearing virtually on 19.07.2022. Immediately thereafter, the impugned orders came to be passed ie., on 20.07.2022. It is also contended by the learned counsel for the petitioner that due to their inability to attend the virtual hearing on 19.07.2022, they had immediately approached the respondent on 20.07.2022 to know about



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the next date of hearing, for which the respondent informed that the petitioner will be informed. However, according to the petitioner, they were shocked to receive the exparte impugned orders.

15. As seen from the different dates of hearing, it is clear that excepting for one of the hearing ie., on 19.07.2022, which was held virtually, the petitioner has attended all the hearings and the same was also not disputed by the learned standing counsel appearing for the respondent. The impugned orders also reflect the same. On 13.06.2022, the petitioner had requested the respondent for further time to file their written statement and also requested to provide documents based on which, the demand has been made.

16. On 04.07.2022, being the next date of hearing, the matter was adjourned due to the fact that the assessing officer was on leave and therefore, it was adjourned to 19.07.2022, when the hearing was conducted virtually. The petitioner now contends that he could not attend the said hearing on the ground that they did not have internet facility on the said



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date and that their personnel was not well versed with the usage of computer technology. The petitioner also contends in this writ petition that they are not liable to pay any interest and damages as per the impugned orders.

17. After giving due consideration to the aforementioned factors, this Court is of the considered view that principles of natural justice has been violated by the respondent before passing the impugned orders which are exparte orders. Necessarily, the petitioner ought to have been granted sufficient opportunity of hearing to enable them to defend the claim of the respondent on merits and in accordance with law. As observed earlier, the decisions relied upon by the learned standing counsel for the respondent have no bearing for the facts of the instant case.

18. For the foregoing reasons, the impugned orders both dated 20.07.2022 are hereby quashed and the matter is remanded back to the respondent for fresh consideration on merits and in accordance with law. The respondent is directed to pass final orders within a period of twelve



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weeks from the date of receipt of a copy of this Order, affording a fair hearing to the petitioner.

19. With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

16.11.2022

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Index: Yes/ No
Speaking Order/Non-speaking Order

To

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
S-1 TNHB Phase- III,
Sathuvachari, Vellore.

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ABDUL QUDDHOSE, J.

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