

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM

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

W.P.NO.32449 OF 2017
AND
W.M.P.NO.35740 OF 2017
AND
W.M.P.NO.19811 OF 2018

Tamil Nadu Generation and
Distribution Corporation Ltd
Tiruvannamalai Electricity Distribution Circle
Vengikkal (Post - 606 604)
Tiruvannamalai
Rep. By its Superintending Engineer ...Petitioner

Vs

- 1.The Regional Provident Fund Commissioner
Office of the Regional Provident Fund
Organization, S-1, TNHB, Phase III
Sathuvachari,
Vellore 632009.
- 2.The Assistant Provident Fund Commissioner (Compliance)
Office of the Regional Provident Fund
Organization, Regional Office,
S-1, TNHB, Phase III
Sathuvachari,
Vellore 632 009.
- 3.The Secretary,
AITUC, Tamil Nadu AITUC
Vellore District Centre,
No.25/14, 6th West Cross Street,
Gandhi Nagar,
Vellore. ...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 of the Second Respondent in Proceedings No. TB/VLR/5887-A/ENF/DIV-VI/2017-18/2797 dated 21.09.2017, quash the same, direct the First Respondent to entertain the review application of the Petitioner

in Letter No.11391-1/SE/ADO/ADM-3/ADS/ADA-4/2017 dated 30.08.2017, further direct the Respondents to claim contribution only in respect of identifiable employees.

For Petitioner : Mr. Anand Gopalan
for M/s. T.S.Gopalan and Co.

For Respondents : Mrs. V.J.Latha
Standing Counsel (for R1 and R2)

For Respondent-3 : Notice Not Ready

O R D E R

Heard Mr. Anand Gopalan, Learned Counsel for the Petitioner and Mrs.V.J.Latha, Learned Standing Counsel appearing for the First and Second Respondents and perused the materials placed on record apart from the pleadings of the parties.

2. The Second Respondent conducted an enquiry under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act' for short) in respect of the contract workers engaged in the establishment of the Petitioner and by Order No. dated 28.02.2005 arrived at the conclusion that the sum of Rs. 86,57,443.60/- was payable for the contribution towards provident fund dues. The Petitioner made an application for review dated 30.08.2017 invoking Section 7-B of the Act with the following explanation for the delay in filing the same:-

"The above request of TANGEDCO may kindly be considered as a special case by taking into consideration that the time lapsed for filing the Appeal under Section 7-B of the Act was due to the pending cases before the various judicial forums. The case was finally dismissed on 20.07.2017 by the Hon'ble Supreme Court of India."

The Second Respondent by Order No. TB/VLR/5887-A/ENF/DIV-VI/2017-18 dated 21.09.2017 refused to entertain that application for review holding as follows, the Second Respondent had held as follows:-

"The Section 7-B of the EPF & MF Act, 1952 read with Para 79-A of EPF Scheme 1952, filing application for review - reads as follows:-

"Any person aggrieved by an order made under sub-section (1) of section 7-A and who desires to obtain a review of such order may apply for a review of that order, as provided in sub-section (1) of section 7B of

the Act in Form 9 to the officer who passed such order."

Provided that, no application for review of an order will be entertained by the concerned officer, unless the application for review is submitted within 45 days from the date of making such order.

In the instant case, the 7-A Order was passed in the year 2005 and the representation for the review petition is submitted to this office on 30.08.2017 is more than 12 years from the date of making of 7-A order.

Further, the Hon'ble Supreme Court of India in C.A. No. 7515-7516/2009 dated 20.07.2017, has disposed the petition.

Since the prescribed time limit has elapsed and the application is not in the required format (Form-9), the review petition cannot be entertained.

In view of the above, the representation for review of the order passed under Section 7-A is not entertained and rejected."

The said order is challenged by the Petitioner in this Writ Petition.

3. It requires to be noticed here that neither the Petitioner had given proper details for the period of delay nor the Respondents has examined the matter in the proper perspective taking into account the relevant dates for reckoning limitation to ascertain whether the review application has been filed in time, when it is a specific case of the Petitioner that cases were pending before various judicial forum till it was ultimately decided on 20.07.2017 before the Hon'ble Supreme Court of India.

4. In such circumstances, this Court is of the consider view that the proper recourse to be followed is to set aside the impugned order and remit the matter to the Second Respondent for examining the question of limitation afresh in preferring the review application. It shall be incumbent upon the Petitioner to provide specific details as to how it was claimed that the review application has been filed in time with regard to the litigations stated to have been pending and their relevance to the order sought to be reviewed. In order to expedite the process, the Petitioner shall provide the aforesaid requisites to the Second Respondent by 18.04.2022 under written acknowledgment. The Second Respondent shall duly examine the said aspects after affording full opportunity of personal hearing to the Petitioner following the prescribed procedure and pass reasoned orders dealing with each of the contentions raised on merits in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Regional Provident Fund Commissioner
Office of the Regional Provident Fund
Organization, S-1, TNHB, Phase III
Sathuvachari, Vellore 632009.
- 2.The Assistant Provident Fund Commissioner (Compliance)
Office of the Regional Provident Fund
Organization, Regional Office,
S-1, TNHB, Phase III
Sathuvachari, Vellore 632 009.

+1cc to M/s.V.J.Latha, Advocate, Sr.No.12514

+1cc to M/s.T.S.Gopalan & Co., Advocate, Sr.No.12401

W.P.No.32449 of 2017

RSI(CO)
RVM(05/04/2022)