IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM

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

W.P. No. 12995 of 2017

The Workmen of Koyas Fasteners Private Limited,
Through United Labour Federation,
Rep. its Secretary,
No.149, Thambu Chetty Street,
C.J. Complex, IV Floor,
Chennai - 600 001. ... Petitioner

-vs-

1. The Assistant Provident Fund Commissioner,
   Regional Provident Fund Office,
   No. 3, Municipal Building,
   Rajaji Salai, Tambaram,
   Chennai - 600 045.

2. The Management of Koyas Fasteners Private Limited,
   Rep. by its Managing Director,
   Natarajapuram, Pukkathurai Village,
   Kancheepuram District - 603 308.

... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First Respondent to take appropriate action against the Second Respondent pursuant to the Petitioner's Complaint dated 15.12.2016, within such time as stipulated by this Court.

For Petitioner : Mr. U.Mahindra Prabhu
for Mr. S.Ganeshram

For Respondents : Mr. R.Vishnu (for R1)

Mr. Manohar Gupta
for M/s. Gupta and Ravi (for R2)

ORDER

Heard Mr. U.Mahindra Prabhu, Learned Counsel for the Petitioner, Mr. R.Vishnu, Learned Counsel for the First Respondent and Mr. Manohar Gupta, Learned Counsel for the Second Respondent and perused the materials placed on record apart from the pleadings of the parties.

2. The Petitioner, which is a Trade Union of the employees of the Second Respondent, has filed this Writ Petition for directing the First Respondent to take appropriate action against the Second Respondent pursuant to the representation dated 15.12.2016 made by the Petitioner within a time frame that may be fixed by this Court.

3. It has been brought to notice that the Second Respondent sent an explanation by letter dated 27.01.2017 to the First Respondent on receipt of the copy of the aforesaid representation dated 15.12.2016 regarding certain deductions made from the wages of the employees and that the matter has been examined. In the Counter-Affidavit dated 10.12.2021 filed by the First Respondent it has been stated as follows:-

> "6. ...The issue referred in the contention of the Petitioner based on Reference No. TN/RO/TBM/ENF/T-5/61237/2014 dated 13/19-06-2014 arose purely on the basis of the inspection conducted by the EO and the report submitted by him wherein the EO has stated that the Second Respondent had not included certain components of wages for the purpose of paying PF contributions and submitted a liability statement under Section 7A of Employees Provident Funds & Miscellaneous Provisions Act, 1952 was initiated on 28.11.2013 and it was decided in 10.6.2014 and order was issued vide letter dated 13/19-06-2014 concluded that an amount of Rs.5,26,048/- of PF liability arose on account of omission of wages for the purpose of PF, being a matter of interpretation of provisions, and the liability arising on account of the 7A Order could not be treated as default by the Second Respondent. This is further confirmed by the fact that after the receipt of the 7A Order, the Second Respondent has remitted the entire dues....
>
> 7. ....Though it is true that the employer as the Second Respondent has failed to remit correct amount as per the provisions of EPF and MP Act, 1952, but it is reiterated that there is no willful default in this case by the Second Respondent and it is only due to misinterpretation of provisions. These

misinterpretations had by the Second Respondent was cleared during the inquiry u/s 7A conducted by this Respondent and the dues assessed vide that order i.e. Rs. 5,26,048/- (Both Employee and Employer share) was accepted by the Second Respondent without any contest in any legal forum and paid the entire dues without much delay....

8. ....The allegations made by the Petitioner are contrary to facts. The Petitioner has failed to understand the fact that the order u/s 7A of EPF and MP Act, 1952, determining the dues on subterfuge wages was on both Employee share of contribution and Employer share contribution. So, in order to minimize the Damages and Penalty arising due to belated remittance as per the provisions of Section 14B and 7Q of EPF and MP Act, 1952, the Second Respondent has remitted both the share even without deducting the same from the employees, the same was explained to this Respondent by the Second Respondent vide its letter dated 27.1.2017 the reasons for which further deductions were made by them from their employees as "PF Loan Recovery" and there is no reason to contradict their claim and the reply by the Second Respondent appears to be bonafide and no malafide intentions could be discerned....

9. ....Once again, it is reiterated that the Second Respondent had paid the PF deductions as demanded by this Respondent and as such, there is no illegality in the instant case and there was further inspection made against the Second Respondent and they have once again paid the demanded dues...."

It is evident from the materials placed on record that appropriate action has been taken on the representation dated 15.12.2016 made by the Petitioner to the First Respondent and nothing remains for further consideration in this Writ Petition.

In fine, the Writ Petition is disposed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dm

To

1. The Assistant Provident Fund Commissioner,
   Regional Provident Fund Office,
   No. 3, Municipal Building,
   Rajaji Salai, Tambaram,
   Chennai - 600 045.

2. The Management of Koyas Fasteners Private Limited,
   Rep. by its Managing Director,
   Natarajapuram, Pukkathurai Village,
   Kancheepuram District - 603 308.

+1cc to M/s. Gupta and Ravi, Advocate, S.R.No.12570

W.P. No. 12995 of 2017

AD(CO)
CT 11/03/2022