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W.P.No.24362 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24362 of 2017
and
W.M.P.No.25776 of 2017

1.State Bank of India,
Rep.by its Assistant General Manager – HR
Local Head Office,
No.16, College Lane,
Nungambakkam,
Chennai – 600 034.

2.State Bank of India,
Rep.by its Chief Manager,
Salem Branch,
Salem – 636 001.

...Petitioners

Vs.

Assistant PF Commissioner,
Employees' Provident Fund Organization,
Sub-Regional Office, S.J.Plaza,
Swarnapuri,
Salem -636 004.

..Respondent

Prayer : Writ Petition filed Under Article 226 of the Constitution of India,
to issue a Writ of Mandamus, forbearing the respondent from proceeding to



W.P.No.24362 of 2017

implement the provisions of EPF & MP Act to the petitioners bank in terms of its notice dated 31.05.17 and 28.08.17.

For Petitioners : Mr.S.Ravindran
For M/s.S.Bazeer Ahamed

For Respondent : Mr.Paneer Selvam

ORDER

The Writ of Mandamus has been filed to forbear the respondent from proceeding to implement the provisions of EPF & MP Act to the petitioners Bank in terms of its notices dated 31.05.17 and 28.08.17.

2. The petitioners are State Bank of India established in terms of the provisions of the State Bank of India Act, 1955. The petitioner-Bank has formulated State Bank of India Employees' Provident Fund Rules and State Bank of India Employees' Pension Fund Rules. The provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1956 [in short, 'EPF & MP Act'] can be enforced only by issuing a notification in terms of Section 1 (3) (b) of the Act in respect of an establishment or class of establishments.



W.P.No.24362 of 2017

WEB COPY

3. The learned Senior counsel appearing on behalf of the petitioners/Bank state that in terms of Section 16(1) (c) of the Act, the provisions of EPF & MP Act is not applicable to any establishment setup under any Central Act and whose employees are entitled to the benefits of contributory provident fund or old age pension with any scheme or rule framed under that Act. In the present case, the State Bank of India was established under the provisions of the State Bank of India Act, 1955 and no notification was issued under the EPF & MP Act as far as the State Bank of India is concerned. Therefore, the show cause notices *per se* are without jurisdiction.

4. In this context, the learned Senior counsel appearing on behalf of the petitioners referred the Notification issued by the Ministry of Labour and Employment dated 10.02.2016, which reads as follows:

“S.O.444(E) – In exercise of the powers conferred by clause (b) of sub-section (3) of section 1 read with section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government



W.P.No.24362 of 2017

hereby specifies that the said Act shall apply to all banks employing twenty or more number of persons as a class of establishment in respect of those employees who are not entitled to the benefit of Contributory Provident Fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government or by the respective banks established under the Banking Regulations Act, 1949 (10 of 1949).”

5. Relying on the Notification, the learned Senior counsel appearing on behalf of the petitioners/Bank reiterated that all Banks falling under the Banking Regulations Act, 1949 alone are brought under the EPF & MP Act and the State Bank of India is concerned, the Notification would not apply, since it was established under the State Bank of India Act, 1955, which is a Central Act.

6. The learned counsel for the respondent made a submission that the authorities competent issued a show cause notice, asking the writ petitioners/State Bank of India to respond to the notice. Instead of responding to the show cause notice, they have chosen to file the present



W.P.No.24362 of 2017

writ petition. Employees' Provident Fund Organization issued a Circular on 30.03.2016, pursuant to the Government of India Notification issued on 10th February 2016. A clarification was issued that the notification shall cover all employees as per definition under Section 2(f) of EPF & MP Act, 1952, excluding the employees, who are getting the benefits of PF and Pension according to rules of concerned banks. Therefore, the respondent is of the opinion that the employees, who all are not governed under the Special Rules for Provident Fund and Pension applicable to the State Bank of India employees are to be brought under the provisions of the EPF & MP Act.

7. Therefore, these facts are to be adjudicated with reference to the documents and evidences available with the State Bank of India. Such an elaborate adjudication cannot be undertaken by the High Court in a writ proceedings under Article 226 of the Constitution of India. Mere show cause notice would not provide a cause to approach the High Court, unless it is issued by an incompetent authority.

8. Though the petitioners/Bank state that the notification would not



W.P.No.24362 of 2017

cover the employees of the State Bank of India, the said fact is disputed by the respondent on the ground that the employees, who all are not governed under the Special Rules of the State Bank of India are to be brought under the EPF & MP Act and they cannot be left without such benefits.

9. Thus, the petitioners/Bank has to participate in the process of enquiry to be conducted by the respondent by placing all the records, enabling the authorities to consider the issue on merits and in accordance with law.

10. Therefore, the respondent is directed to conduct an enquiry as expeditiously as possible without causing any undue delay.

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

18.11.2022

Index : Yes
Speaking order: Yes

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W.P.No.24362 of 2017

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WEB COPY To

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Employees' Provident Fund Organization,
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WEB COPY



W.P.No.24362 of 2017

S.M.SUBRAMANIAM, J.

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W.P.No.24362 of 2017

18.11.2022