BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A(MD)No.558 of 2011

and

M.P(MD)No.1 of 2011

The Executive Officer/Joint Commissioner,
Arulmigu Dhandayuthapaniswamy Thirukoil,
Palani-624 601, Dindigul District. ... Appellant/Petitioner

vs.

1.The Registrar,
Employees Provident Fund Appellate Tribunal
(Ministry of Labour & Employment, Govt of India)
Scopeminar Core-II, 4th Floor, Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi-110 092.

2.The Regional Provident Fund Commissioner,
Bhavishyanidhi Bhavan, Post Box No.1,
Lady Doak College Road, Chooikulam,
Madurai-625 002. ... Respondents/Respondents

Appeal filed under Clause 15 of Letters Patent, against the order dated 28.01.2011 in W.P(MD)No.12085 of 2010.

Prayer in WP(MD). 12085 of 2010 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI calling for the entire records in connection with the impugned order of the 1st respondent dated 23.07.2010 in A.T.A.No. 906 (13) 2008 and that of the order of the 2nd respondent dated 23.10.2007 in No. M11/TN/RO/MDU/29605 & 29604 / Enf/2007 and quash the said proceedings.

For Appellant : Mr.R.Devaraj

For R1 & R2 : Mr.K.Murali Sankar

JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

Challenge in this writ appeal is to the order of the learned Single Judge dated 28.01.2011 made in W.P(MD)No.12085 of 2010, in and by which, the writ petition filed by the petitioner/appellant Temple challenging the orders of the appellate authority under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as, ''the Act'') was dismissed.

2. The Provident Fund authority launched the proceedings against the Temple under Section 7A of the Act in respect of the Hospital and the Matriculation School run by the Temple. The Provident Fund Authority held that these two institutions were brought under the scope of the Act on 01.12.1977 and 01.08.1992 respectively. A coverage memo was issued on 08.10.1994 and the Hospital and the School were allotted separate code numbers in No.TN/29605 and TN/29604 respectively. The said coverage memo was challenged by the appellant Temple in W.P(MD)No.9662 of 1997 and stay of operation of the said coverage memo was obtained by the Temple authorities. The said writ petition was disposed of with a direction to the appellant to approach the authority by submitting an explanation with all relevant documents.

3. Thereafter, an enquiry under Section 7A of the Act was conducted by the authority. Before the authority, the appellant contended that it being a institution under the control of the State Government and having its own Contributory Provident Fund Scheme, it will be an exempted establishment within the meaning of Section 16 (1)(b) of the Act. It was also contended that while the school employees were about 27 persons on the date of coverage, the hospital employees were only 7 persons and therefore, the Hospital would be an exempted establishment. The authority compared the provisions of the scheme with the provisions of the scheme under the Act and found that the scheme under the Act is more beneficial to the employees. Therefore, the authority held that the Act would apply and the institutions are liable to pay contributions under the Act.

4. Aggrieved, the Temple preferred an appeal before the appellate authority. The learned appellate authority held that the institution cannot be termed as an institution under the control of the State or Central Government and therefore, the exemption provided under Section 16(1)(b) would not be applicable. On the question of contribution, the appellate authority concluded that the finding of the original authority is correct and does not call for

interference. Hence, the Temple approached this Court again in W.P (MD)No.12085 of 2010.

5. The Writ Court concurred with the appellate authority in its conclusion that the Temple cannot be said to be under the control of the State Government. The Writ Court also found that the Hindu Religious and Charitable Endowments Department itself has withdrawn the Provident Fund Scheme that was made applicable to all the Temples and had directed the Temples to get covered by the Employees' Provident Fund Scheme under the Act. The Writ Court, therefore, concluded that the Temple which runs the Hospital and School is bound to pay the contribution as per the Act. Hence, this appeal by the Temple.

6. We have heard Mr.R.Devaraj, learned counsel appearing for the appellant and Mr.K.Murali Sankar, learned counsel appearing for the respondents.

7. Mr.R.Devaraj, learned counsel appearing for the appellant would vehemently contend that the appellant being a institution which is under the control of the State Government and having its own Provident Fund Scheme till 2006, the authorities cannot demand contribution. He would also submit that the Hospital cannot be treated as an establishment under the Act since it employs less than 20 persons. He would also fault the authorities for combining both the Hospital and the School to conclude that they are employing more than 20 persons. Mr.Devaraj would also contend that the authority under Section 7 of the Act is bound to pass an order determining the amount payable and in the absence of such determination, the appellant cannot be directed to pay contribution.

8. As regards the contention of Mr.Devaraj that the Temple is an establishment under the control of the State Government, we are unable to agree with his submissions. Temples are independent entities. Though a supervisory mechanism is provided under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the authorities under the said Act cannot interfere with the day-to-day management of the Temple or its affairs. It has been held by a long line of decisions of this Court as well as by the Hon'ble Supreme Court that the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is only an enactment which enables establishment of a Board to have a supervisory control over the Temples particularly, the finances and the properties of the Temples. The Temples are administered by the trustees and in the absence of trustees, a provision is made for appointment of a fit person that by itself will not make the establishment one under the control of the State Government. We are, therefore, unable to find fault with the Writ Court, when it held that the appellant is not an exempted establishment under section 16(1)(b) of the Act.

9. Adverting to the second contention of Mr.Devaraj that the

Hospital employs less than 20 persons and therefore, it cannot come within the meaning of an establishment under the Act, we are inclined to accept the submissions of the learned counsel for the appellant. Though Mr.Murali Sankar learned counsel appearing for the respondents would vehemently contend that the Hospital and the School being run by the same employer, the total strength of both the establishments should be taken into account to decide the applicability. He would rely upon Section 2A of the Act to justify his submission. Section 2A of the Act reads as follows:-

> ''2A.Establishment to include all departments and branches.—For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.''

10. We are unable to accept the contention of the learned counsel that the School and the Hospital should be treated as same department or branches of the same establishment. While the Matriculation School run by the appellant was brought under cover of the Act in the year 1992, the Hospital run by the appellant was brought under the cover of the Act in the year 1977. Separate code numbers were allotted to the Hospital and the School. Therefore, it cannot be said that the School and the Hospital should be treated as one unit for the purpose of determining the applicability of the enactment. It is seen from the records that the Hospital employs only 7 persons at the time of coverage. Therefore, the Hospital cannot be treated as an establishment liable to coverage under the Act. Hence, the authority is not justified in demanding contribution from the Hospital. Therefore, the Hospital would be exempt from the provisions of the Act.

11. As regards the School, it is seen that the School had admittedly employed 27 persons at the time of coverage. It is the grievance of Mr.Devaraj, that the authority under the Act has not complied with Section 7A(1)(b), inasmuch as the authority has not determined the amount due from the employer under the provisions of the Act. Unless the amount is quantified, the appellant cannot be expected to pay. We find from the orders of the authorities that the contention of Mr.Devaraj is justified. The amount payable has not been determined. Admittedly, the institution has got its own Contributory Provident Fund Scheme and the employees have been contributing to the same and they have also been enjoying the advantages of the said scheme. The same should also be taken into account while determining the contribution payable. While upholding the applicability of the Act to the School alone, we remit the matter to the authority to enable him to decide the amount due from the employer under Section 7A(1)(b) of the Act. While doing so, the authority will also take into account the benefits which were

granted to the employees under the Contributory Provident Fund Scheme that is now in force and decide the quantum accordingly.

12. The Writ Appeal stands disposed of on the above terms. Such exercise shall be completed within a period of 6 months from the date of receipt of a copy of this judgment. Needless to say that the appellant will co-operate with the authorities. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Protocol)

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Sub Assistant Registrar(CS)

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To

1.The Registrar,
Employees Provident Fund Appellate Tribunal
(Ministry of Labour & Employment, Govt of India)
Scopeminar Core-II, 4th Floor, Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi-110 092.

2.The Regional Provident Fund Commissioner,
Bhavishyanidhi Bhavan, Post Box No.1,
Lady Doak College Road, Chooikulam,
Madurai-625 002.

+1 CC to M/s.R. DEVARAJ, Advocate (SR-18901[F] dated 18/04/2022)

+1 CC to M/s.K. MURALI SANKAR, Advocate (SR-18934[F] dated 18/04/2022)

W.A(MD)No.558 of 2011
DATED : 13.04.2022

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