BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.09.2022**

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.12828 of 2012
and
M.P.(MD)No.1 of 2012

Hotel Gowri Shankar
New Bus Stand,
Kumbakonam
Through its Managing Partner ... Petitioner

Vs.

1. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub Regional Office,
No.18, Sri Complex, Madurai Road,
Trichy – 8.

2. The Assistant Provident Fund Commissioner (Recovery),
Employees Provident Fund Organization,
Sub Regional Office,
No.18, Sri Complex, Madurai Road,
Trichy – 8. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records from the file of the first respondent herein in D3/TN/TR/32384/SRO-TRY/2012, dated 04.04.2012 and to quash the same and to direct the first respondent to fix the date of hearing in relating to the petition, dated 03.09.2012 filed by the petitioner under Sec.7A(4) of the EPF Act to set aside the ex-parte order, dated 04.04.2012 and to provide opportunity to the petitioner and decide the matter on merits and also pleased to pass any other further order or orders

For Petitioner : Mr.P.Chandra Bose

For Respondents : M/S.Pinaygashi

ORDER

This Writ Petition is filed seeking for a Writ of Certiorarified Mandamus, to quash the impugned order, dated 04.04.2012 and to direct the first respondent to fix the date of hearing in relating to the petition, dated 03.09.2012, filed by the petitioner under Section 7A(4) of EPF Act to set aside the ex-parte order, dated 04.04.2012 and to provide opportunity to the petitioner and decide the matter on merits.

2. The brief facts as stated in the affidavit is that the petitioner is running a small Hotel under name and style of Hotel Gowri Shankar near bus stand, Kumbakonam. The said establishment is covered under EPF and the EPF Department has allotted code number as TV/32384. Subsequently, the petitioner got a shop on lease from the Kumbakonam Municipality at the Shopping Complex inside the bus stand and run another hotel business. The contention of the petitioner is that he has remitted back the contribution and forms without any delay for the Hotel run by the petitioner which is outside of the Kumbakonam bus stand. Subsequently, one Enforcement Officer from the first respondent organization visited the Hotel situated outside the bus stand as well as the Hotel run inside of the bus stand and claiming contribution for 29 employees for both the concerns for the period from January 2011 onwards. The petitioner represented that the Hotel situated inside the bus stand cannot be clubbed with the Hotel situated outside the bus stand. At the time, the records were taken by the Accountant of the petitioner

Establishment for the purpose of preparation of sales tax returns. Hence, the petitioner Establishment submitted before the authority that no records are available for production at that time. But the petitioner had produced the remittance challans of the EPF remittance from the month of March 2010 to December 2010.

3. Subsequently 7A hearing was initiated by the first respondent. The petitioner was not available since he went to his native place along with his family members since one of his close relative was ill in the native place and the relative had undergone liver transplant treatment. Hence, the first respondent had fixed the hearings from 29.10.2010 to 19.04.2011 and the petitioner did not attend because of the aforesaid reasons. The petitioner could not depute any person to appear for hearing on behalf of him. Only in the month of May 2011, the petitioner returned to his working place. Thereafter, the petitioner received another notice fixing the date of hearing on 26.07.2011 and the petitioner gave authorization to one Mr.P.Ramesh to appear before the hearing. But the hearing fixed on that date was adjourned due to

administrative reasons and the next adjourned dated was not intimated to the petitioner. The said representative informed the petitioner that the next hearing date will be issued by the first respondent. But the petitioner did not receive any notice fixing the date of hearing on 18.08.2011 nor on 21.09.2011. But the authority has passed an ex-parte order, dated 04.04.2012, nearly after 8 months of the petitioner's authorized representative appeared for the hearing.

4. In the meanwhile, the petitioner has remitted the contribution for the period from April 2010 to July 2011 to the tune of Rs.53,896/-. The petitioner had also submitted that the challan for the month of June 2010 was misplaced and he has filed a xerox copy. The contention of the petitioner is that before the date of receipt of the ex-parte order as well during the pendency of the 7A proceedings, the petitioner had remitted the contribution for the said period. The first respondent also assessed the dues for 29 employees on adhoc basis and based upon the salary paid to them. The further contention of the petitioner is that in the beginning of April 2010, the petitioner has

engaged 10 employees. In December 2010, the petitioner has engaged 34 employees and subsequently it was reduced to 27 employees. Finally, the petitioner has engaged only 20 employees. Hence, the entire calculation of the employee's strength as well as the salary fixation was completely wrong and the assessment for the total wages paid for a sum of Rs.1,49,161/- per month from April 2010 to July 2011 are completely on the basis of wrong calculation. Based on this factor, the learned Counsel appearing for the petitioner submitted that the matter may be remitted back by quashing the 7A order and grant an opportunity to put forth all these factors before the authorities.

5. The respondents have filed a counter affidavit stating that the petitioner was granted sufficient opportunity but the petitioner had not availed the opportunity. The petitioner has not submitted the challan of remittance along with form 12 A to the office by the fifth of the following month. For such remittance, grace time of 5 days was granted. The petitioner has availed such grace time also. Hence, the petitioner is liable to pay interest on 12% per annum. The amount quantified based

on 7A order is Rs.6,11,200/- (Rupees Six Lakhs Eleven Thousand and Two Hundred only). However, the petitioner has paid only Rs.53,000/-. However, the petitioner has also preferred an appeal under 7A(4) beyond three months limitation period. Hence, the appeal cannot be entertained. Moreover, the petitioner ought to prefer an appeal under 7(Q) before the Tribunal. Therefore, the respondents prayed to dismiss the writ petition.

6. Heard Mr.P.Chandra Bose, learned Counsel appearing for the petitioner and M/S.Pinaygashi, learned Counsel appearing for the respondents and perused the records.

7. It is an admitted fact by the learned Counsels for the petitioner and the respondents that the impugned is an ex-parte order. The reasons stated by the writ petitioner is that because one of his relative was ill and he was undergoing liver transplant treatment, he could not appear for hearing. The petitioner had remitting the amount for the month of April 2010 to July 2011 to the tune of Rs.56,896/-. The contention of the petitioner is that the employees who was engaged

during the period April 2010 was only 10 employees. Subsequently, the petitioner has established another Hotel inside the bus stand. The employees engaged in December 2010 is 34, subsequently, it was reduced to 27 and then 20 employees in the Month of June 2011. Therefore, the claim of the petitioner is that he is not entitled to pay the 34% as claimed by the respondents. However, all these are factual matrix which can never be ascertained. Since it is an ex-parte order, this Court is of the considered opinion that the petitioner ought to be granted an opportunity to establish his facts to the authorities.

8. Hence, this Court is inclined to set aside the impugned 7A order and remit the matter back to the authorities. The petitioner is directed to produce all the relevant records before the authorities and the authorities shall pass order under Section 7A within a period of twelve (12) weeks from the date of receipt of a copy of this order. The petitioner shall cooperate with the enquiry proceedings.

9. With the above said direction, this Writ Petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

15.09.2022

Index : Yes / No
Internet : Yes / No
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To

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S.SRIMATHY, J

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Order made in
W.P.(MD)No.12828 of 2012

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