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W.P.(MD)No.14363 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.14363 of 2012

and

M.P.(MD)No.1 of 2012

M/s.Ramanathapuram District Central
Co-operative Bank Limited,
represented by its General Manager,
Vandikkara Street, Ramanathapuram.

... Petitioner

vs.

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Madurai, Tamil Nadu.

2.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar, Core II 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi – 110 092.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for
issuance of Writ of Certiorari, to call for the records relating to the impugned



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order passed by the second respondent, vide ATA No.395(6) 2004, dated 11.10.2013, confirming the order passed by the first respondent vide No.E/TN/MD/4168/Exm/Enf/Mdu/SRO/2004, dated 13.02.2004 and to quash the same.

For Petitioner	: Mr.D.Shanmugaraja Sethupathi
For R1	: Mr.A.John Xavier
For R2	: Tribunal

ORDER

This writ petition is filed for issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the second respondent, dated 11.10.2013, confirming the order passed by the first respondent, dated 13.02.2004 and to quash the same.

2. The petitioner is the Ramanathapuram District Central Co-operative Bank Limited incorporated under the Tamil Nadu Co-operative Societies Act. The petitioner Bank is an exempted unit under Section 17(1)(a) of the Employees Provident Fund and Miscellaneous Provisions Act read with paragraph 79 of the



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Employees Provident Fund Scheme. As per the condition, the petitioner Bank has established a Board of Trustees for the administration of the provident fund. While so, the petitioner Bank having its Head Office at Manamadurai was trifurcated and the establishment and staff were also trifurcated and allotted to the respective Banks. The above fact was informed to the Employees Provident Fund Organization. Due to the new constitution / trifurcation of the Banks, they faced some difficulties in preparation wage bills, particulars of deduction, maintenance of records, funds for disbursement, disbursement of salary, etc., which were available in one form were segregated into 3 for all purpose of the respective Banks.

3. As far as the EPF contribution is concerned, the petitioner Bank informed about the trifurcation and constitution of 3 new Banks and approached the EPF Organization about the payment, account maintenance etc. The officials felt the difficulties faced by the new establishment and advised that as the EPF account stood in the name of Ramanathapuram District Central Cooperative



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Bank, instead of allotting new code number to other two Banks, the same code number may be continued until they are allotted separate code number in consultation with the higher officials of the EPF Organization and until then all the three Banks had to remit contribution in the old code number. It was also suggested that the Ramanathapuram District Central Cooperative Bank has to collect the contribution payable by other Banks also and to remit the same as one payment as paid by earlier. Thus, the petitioner Bank was forced to undertake a new service on behalf of EPF Organization and the other two Banks to collect contribution from the respective Banks, prepare the returns, etc., and to remit the amount then and there.

4. The first respondent had issued summons under section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, (in short the Act) to the Bank to appear on 22.10.2003 stating that 119 employees of petitioner Bank had not been enrolled as EPF members with effect from 6/1987 to 4/1991 and EPF contribution for 1987-1988 to 1992-1993 had not been remitted in



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respect of 68 employees though their names had already been included in Form-8. As the summon issued by the first respondent is bereft of particulars, the petitioner Bank requested the first respondent to furnish the details of list of persons alleged to have been omitted to be enrolled. The first respondent has not furnished the particulars or list of persons. On the other hand, without giving sufficient opportunity to the petitioner Bank, the first respondent has passed the order, dated 13.02.2004, under section 7(A) of the Act, directing the petitioner Bank to remit a sum of Rs.1,80,1996/- towards EPF contribution from 1987-1988 to 1992-1993 in respect of 66 employees and sum of Rs.3,41,530/- towards EPF contribution from 6/1987 to 4/1991 in respect of 119 employees. The said order was passed ex-parte by the first respondent. Subsequently, the petitioner Bank has filed a petition under section 7-A(4) of the Act to set aside the ex-parte order and hear the case on merits, but the first respondent, without hearing or applying his mind to the contentions of the petition, has rejected the petition on the threshold by an order, dated 02.04.2004, stating that the petition for reopening the case under section 7(A)(4) of the Act could not be accepted. Aggrieved over the order



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passed by the first respondent under section 7(A) of the Act and consequential rejection for entertaining the petition under section 7(A)(4) of the Act, the petitioner Bank has filed an appeal under section 7(1) of the Act before the second respondent Tribunal. The Tribunal without considering the grounds raised in the appeal has dismissed the appeal by an order, dated 11.10.2010. Aggrieved over the same, the present writ petition is filed.

5.The main contention of the petitioner is that the Bank was functioning as a single unit. Subsequently, it was trifurcated and the employees have also been allotted to three different units. The EPF organization advised to have a single code number until the trifurcation is completed. Therefore, the petitioner was forced to maintain the same for few years. The petitioner organization was confused, since the petitioner organization was not having any list of employees who are functioning in other two units. When the proceedings were pending before the authorities, the petitioner has sought time but the EPF organization without granting time, had passed an ex-parte order.



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6. Therefore, this Court is of the considered opinion that the respondents ought to have granted sufficient opportunity to the petitioner for proving their case. Therefore, this Court sets aside the order passed under Section 7(A) and remit the case back to the authorities to reconsider the case. The petitioner has already furnished the documents and the necessary particulars to the respondents, however liberty is granted to the petitioner to submit further documents / evidence. The respondents are in possession of some particulars, which the respondents shall service the particulars to the petitioner. The respondents shall grant personal hearing to the petitioner. Thereafter the respondents shall pass speaking order and the said exercise shall be completed within a period of 12 months from the date of receipt of a copy of this order.

7. With the above observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

Internet : Yes

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