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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.11774 of 2013
and
M.P.(MD).No.1 of 2013

The Management,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
represented by its General Manager,
Dindigul Region, Bye-Pass Road,
Collectorate Post, Dindigul-624 004. ... Petitioner

Vs.

1.The Regional Provident Fund Commissioner,
Post Box No.1, Lady Doak College Road,
Narimedu, Madurai- 625 002.

2.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
New Delhi. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the 2nd respondent in Ref.No.ATA 499 (13) 2001 culminating in the order, dated 09.08.2012 and to quash the same and to allow the appeal filed by the petitioner before the 2nd respondent in Ref.ATA 499 (13) 2001.

For Petitioner	:	Mr.A.Balaji for Mr.Rajnish Pathiyil
For R-1	:	Mr.K.Muralishankar
For R-2	:	Tribunal

O R D E R

The Writ Petition is filed for issuance of a Writ of Certiorari, to quash the impugned order passed by 2nd respondent in Ref. No. ATA 499 (13) 2001 culminating in the order, dated 09.08.2012 and to allow the appeal filed by the petitioner before the 2nd respondent in Ref. ATA 499 (13) 2001.

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2. The brief facts of the case are that the petitioner / Corporation is having more than 5,000 employees working in the Madurai region. A scheme was introduced on 16.11.1995, by the Central Government for the workers under the Provident Fund Act. But, the State Government with an intention to form a better scheme wrote a letter on 15.12.1995, to the Regional Provident Fund Commissioner stating that by virtue of the provisions to enable the State Transport Undertaking to secure exemption from the application of the family pension scheme so that more beneficial fund may be introduced to the Transport Corporation employees. Thereafter, the State Government has requested the first respondent to permit the State Transport Undertaking to deposit the amount at 8.33%. However, on 18.12.1995, the Regional Provident Fund Commissioner informed the Government that under the Employees' Pension Scheme, 1991, there is no provision for grant of exemption in remitting the amount that is due for remittance for the fund. The petitioner further informed the first respondent by a letter, dated 04.12.1996, that the Government of Tamil Nadu has formulated more beneficial scheme. The State Government also requested the petitioner to keep the contribution in the separate account, till new scheme is approved. Further on 20.12.1996, the Government has informed the first respondent that the new scheme is likely to be finalized as soon as possible. Thereafter, by a letter, dated 31.12.1996, the first respondent has informed the Government that the petitioner has not complied with the statutory requirements and not filed any exemption under the scheme. Thereafter, the account has been deposited in the Provident Fund account from December 1995 to October 1996 and then was transferred to first respondent's account. By letter, dated 24.10.1997, the petitioner informed the first respondent only under the direction of the Government all the State Transport Undertakings were keeping the amount separately and therefore, requested the first respondent to condone the delay in remittance of the Employees contribution and waive the interest for belated payment of arrears and not levy any damages as a special case.

3. The petitioner Corporation approached the Tribunal stating that they cannot levy any penal damages. The Tribunal directed the Corporation to deposit 12% interest for the period of default. The petitioner also submitted an application before the first respondent to condone the delay in belated remittance of the said amount and the sole reason is to formulate separate Provident Fund Trust account. But the first respondent erroneously passed an order, dated 16.12.1998, directing the petitioner to pay the damages for a period from 15.12.1995 to October 1996 totaling amount of Rs.21,71,842/-. Aggrieved over the said damages, the petitioner has preferred the present Writ Petition. The petitioner preferred an appeal and the same was dismissed by an order, dated 25.04.2011. Hence, the present Writ Petition is filed.

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4. The first respondent has filed a counter affidavit stating that the Central Government has introduced the scheme on 16.11.1995 and the petitioner was brought into the scheme immediately. The petitioner has not claimed any exemption. The claim of the petitioner is that they are formulating the separate scheme which is more beneficial than the Employment Provident Fund. From 1995 to 1998, the petitioner management has not formulated any scheme. Hence, the petitioner corporation is liable to pay Employment Provident Fund. The respondents also submitted that under 14 B the charges are leviable and if there is any claim for exemption, the petitioner has to prove that it is a sick Unit and it has been deprived by the BIFR (Board for Industrial and Financial Reconstruction). Otherwise, the petitioner is not entitled to any benefits. In the present case, there is no order from BIFR. Therefore, the petitioner is not entitled to any benefits.

5.Heard Mr.A.Balaji, learned Counsel appearing for the petitioner and Mr.K.Muralishankar, learned Counsel appearing for the first respondent.

6. The learned Counsel appearing for the petitioner submitted that the same issue was considered by this Court in W.P.(MD)No.9231 of 2010, vide order, dated 26.03.2019, in ***Assistant Provident Fund Commissioner Vs Employees Provident Fund Appellate Tribunal***, wherein, it has been stated as under:

> *"9.This Court does not find any infirmity in restricting the damages imposed on the second respondent up to 15% per annum on the arrears of contribution. This Court is in agreement with the view taken by the Tribunal in following the decision of the High Court of Orissa in the case of Bhubaneswar City Distribution Division Vs. Union Of India and another reported in 1998 II LLJ 1044 for the said purpose."*

7. This Court has reduced the damages from 37% to 15%. The respondents vehemently opposed to reduce the calculation of damages, since the statutory provision says 37% of damages is leviable. On pursuant to the power to recover charges under 14 B, it is stated that the waiver can be reduced or waived, the damages can be reduced or waived after it is declared as a sick Unit by the BIFR.

8. The learned Counsel appearing for the petitioner submitted that TNSTC is not in a healthy financial status. Repeatedly, for several years, this Court has held that the TNSTC is sinking Unit and the Government is supporting through government funds.

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9. Therefore, this Court is of the considered opinion that the petitioner has already paid the amount for a period in one ransom, which is payable for the months from January 1996 to December 1996 and therefore the petitioner is entitled to consider for reduction in payment of damages. Therefore, this Court is of the considered opinion that the petitioner is entitled to relief and hence, the damages of 37% is reduced to 15%. The impugned order is set aside and the respondents shall implement this order within a period of four weeks from the date of receipt of a copy of this order.

10.With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

Tmg

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Regional Provident Fund Commissioner,
Post Box No.1, Lady Doak College Road,
Narimedu, Madurai- 625 002.

2.The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
New Delhi.

+1 CC to M/s.K.MURALI SANKAR, Advocate (SR-2078 [F] dated 25/04/2022)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-20775[F] dated 25/04/2022)

W.P.(MD).No.11774 of 2013
22.04.2022

SS/01.06.2022 : 4P/5C