BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.09.2022**

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THE HON'BLE MR.JUSTICE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.7777 of 2012
and
W.M.P.(MD)Nos.14959 & 14998 of 2021
and
M.P.(MD)Nos.1 of 2012

W.Duke Durairaj ... Petitioner

Vs.

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Ministry of Labour, Government of India,
Sub-Regional Officer,
Bhavishypuidhi Bhavan,
NGO 'B' Colony,
Perumalpuram,
Tirunelveli – 07. ... Respondent

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 impugned order dated 30-03-2012 made in No.TN/TNY/75819/C.D.I/T-15/2012 on the file of the Respondent and quash the same and consequently direct the Respondent to entertain the review application dated 24-03-2012 made as against the original order determining the dues payable by the Petitioner's establishment to the Respondent under 7(A)(1)(b) on the Employees Provident Funds and Miscellaneous Provision Act 1952 in the proceedings bearing No. File No.TN/TNY/75819/Enf.I/Circle 14/14130 and 14131/2011 dated 10-01-2011 and enquire the same in accordance with law and also on merits and pass appropriate orders there upon.

For Petitioner : Mr.S.Palanivelayutham
For Respondent : Mr.K.Muralishankar

ORDER

This Writ Petition is filed seeking for Writ of Certiorarified Mandamus to quash the impugned order, dated 30.03.2012 and consequently, direct the respondents to entertain the review application, dated 24.03.2012 made as against the original order determining the dues payable by the petitioner's establishment under 7(A)(1)(b) on the employees Provident Funds and Miscellaneous Provision Act, 1952, dated 10.01.2011.

2. The petitioner's establishment was brought under the Employees Provident Fund and Miscellaneous Provision Act, 1952 with effect from 01/2006 onwards. The respondent has issued a summon on 11.10.2010 but due to personnel inconvenience the petitioner did not appear and the hearing was adjourned to various days. Finally, an Inspector was appointed under Section 13 of the said Act for submitting necessary report after making personnel inspection in the petitioner's establishment, who had subsequently filed a report on 03.01.2011. In the report, it has been stated that the establishment has not produced any records and he himself obtained the details of the employees for the period 01/2006 to 09/2007 and the wages for the period from 10/2007 to 07/2010 from the ESI Corporation. On the basis of the details furnished by the Enforcement Officer the respondent determined the dues for the said period as Rs.5,06,646/- (Rupees Five Lakh Six Thousand Six Hundred and Forty Six only) under Section 7(A)(1)(b) vide order dated 10.01.2011. The said order was communicated to the petitioner and he was called upon to pay the amount within 7 days. As the said sum was not paid, the respondent initiated subsequent proceedings under Section

8(b) to 8(g) of the said act. As per the instructions of the first respondent, the Recovery Officer of the Employees Provident Fund Organizations issued an order of attachment of immovable property on 03.11.2011. The property bearing Plot No.8 and 9, Survey No.358/2 part, 358/11 part measuring to extension of 17.96 cents at Bharathi Nagar Block No.2, Keelanatham Village, Palayamkottai was attached for non-payment of the said dues. The respondents submitted an objection, dated 13.01.2011 and sought an opportunity to review the said order which was passed ex-parte. On receiving the said communication, the first respondent sent a reply informing that the review of the said order has to be filed in the prescribed format as provided under Section 7(b) or Section 7A (4). In pursuance of the above communication, the petitioner preferred a Review Petition challenging the legality of the order, dated 10.01.2011 and the same was filed on 26.03.2012. Even prior to the filing of Review Petition, the petitioner has sent a communication on 15.03.2011 to consider the petitioner's representation which was given in the form of review as early as on 13.01.2011. Along with the said communication, the petitioner enclosed the relevant documents for making necessary review on the above said order. The respondent, vide communication, dated 30.03.2012, informed that the petitioner's application have been rejected since it has not been submitted within the time limit specified in Para 79(A) of the Employees Provident Fund Scheme 1952, the said order was challenged in the writ petition.

3. The respondent has filed a counter affidavit stating that though the establishment started functioning in 2006, the employees strength exceeded 19 only in July 2010. The said facts of the petitioner was disputed, since 23 persons was working as on 01.01.2006, as per the information gathered from the ESI Corporation. Therefore, the respondents passed an order, directing the petitioner to deposit the said amount. The petitioner has submitted a letter, dated 13.01.2011, which was received by the respondent on 27.01.2011. In the said letter, it has been stated that due to personal reason, the petitioner was not available for the inquiry and the petitioner had also stated that they had paid the contribution for July 2010. The claim of the petitioner is that they have never deducted the contribution from the employees. The petitioner has

also requested to calculate the contribution by waving and also to provide some time to pay contribution. Since the inquiry was already concluded, vide order dated 10.01.2011, the petitioner was advised, vide letter, dated 07.02.2011 to file a Review Petition in the prescribed format, whereas the petitioner has not filed a Review Petition within a time. Hence, the authorized officer has issued a notice, dated 01.03.2011, under Section 8F of the Act to Indian bank, the bankers to the establishment requiring the bank to transfer the amount if any standing to the credit of the establishment. However, two recovery certificates, dated 07.04.2011 for a sum of Rs.4,98,608/- (for the period 01/2006 to 06/2010) and Rs.8038/-(for the month of 8/2010) were also issued in accordance with the provisions under Section 8B and consequently, the recovery officer issued a notice of demand, dated 21.04.2011, as per Rule 2 of the Second Schedule to the Income Tax Act. Subsequently, the petitioner, vide letter, dated 06.07.2011 has stated that a sum of Rs. 10,37,100/- (Rupees Ten Lakh Thirty Seven Thousand and Hundred only) is due from an institution in which they had undertaken work and requested to recover the amount from the Institution. However, the

Institution later informed that they had already settled the accounts to the petitioner establishment.

4. The Recovery Officer had attached the immovable property to recover the outstanding amount and initiated proceedings to sell a property and has issued a sale proclamation. After the issue of sale proclamation, one Mahalingam, has filed a petition reporting that the said property has been purchased by him, vide sale deed, dated 28.10.2011, while a notice had already been served on defaulter on 06.07.2011, under Rule 2 of the Second Schedule notice was pending. Therefore, the petitioner was debarred from selling the property. In the meanwhile, the said Mahalingam has filed a O.S.No.90 of 2012 on the file of Sub-ordinate Judge, Tirunelveli and the same was pending. Since the Review Application order was received in time, the order passed under the Act is not illegal and the petitioner is liable is pay the amount. The respondent submitted that there is no illegality in the proceedings and prayed to dismiss the writ petition.

5. Heard Mr.S.Palanivelayutham, the Learned Counsel appearing for the petitioner and Mr.K.Muralishankar, the Learned Counsel appearing for the respondent and perused the records.

6. The contention of the petitioner is that the said impugned order was passed on 10.01.2011, immediately the petitioner had submitted a representation, dated 13.01.2011, but respondent directed to file the Review Application in a proper format. The petitioner has sent a communication, dated 15.03.2011 to consider the petitioner's representation, dated 13.01.2011, along with the relevant documents. But the respondents failed to entertain the request. Thereafter the petitioner had filed a Revision Petition on 24.03.2012. The respondent had passed an order without considering the Revision Petition and without going into the records that were submitted before the respondent. The petitioner submitted that proper opportunity was not granted to the petitioner and the order passed on 10.01.2011 is an ex-parte order under Section 7(A)(4). However, the learned Counsel for the respondent submitted that

since the petitioner has not submitted a Review Application within the prescribed time of 45 days, the Review Application could not be considered. Moreover, the respondents submitted that after the verification of records from ESI, the impugned order has been passed and hence the order is legally sustainable.

7. This Court is of the considered opinion that since proper opportunity was not granted, the petitioner's case ought to be considered. Therefore, this Court is inclined to remit back the case to the respondent for re-consideration. Hence, the respondent is directed to re-consider the Review Application, dated 24.03.2012 by granting adequate opportunity to the petitioner and pass orders afresh.

8. With the above said direction, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

12.09.2022

Index : Yes / No
Internet : Yes / No
jbr

S.SRIMATHY, J

jbr

To

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Ministry of Labour, Government of India,
Sub-Regional Officer,
Bhavishypuidhi Bhavan,
NGO 'B' Colony,
Perumalpuram,
Tirunelveli – 07.

Order made in
W.P.(MD)No.7777 of 2012

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