BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.08.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE G.CHANDRASEKHARAN**

W.P.(MD)No.8774 of 2012
and
M.P(MD) No.1 of 2012

National Pulses Research Centre,
Rep. by its Professor and Head,
Tamil Nadu Agricultural University,
Vamban Colony-622 303,
Pudukottai District. ... Petitioner

/vs./

1.The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub Regional Officer,
Shree Complex, 'D' Block,
18, Madurai Road,
Trichy-620 008.

2.The Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
Shree Complex, 'D' Block,
18, Madurai Road,
Trichy-620 008. ... 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 Order No.SDC/TN/TRY/32348/Circle:12/SRO-TRY/2012 dated 07.06.2012/ 12.06.2012 passed by the second respondent and quash the same.

For Petitioner : Mr.A.Thirumurthy

For Respondents : Mr.I.Pinaygash

ORDER

This Writ Petition has been filed challenging the Order No.SDC/TN/TRY/32348/Circle:12/SRO-TRY/2012 dated 07.06.2012/ 12.06.2012 passed by the second respondent.

2.The learned counsel appearing for the petitioner submitted that the petitioner University is a creation of the Tamil Nadu Agricultural University Act 1971 and it is funded by the Government of Tamil Nadu. Apart from the regular employees of the university, few casual agricultural labourers on daily wage rate, were engaged during the season, for the limited purpose of agricultural field works like weeding, sowing seeds etc. The Regional Provident Fund

Commissioner, Tirunelveli, issued the communication dated 09.10.1991 and directed the Agricultural Research Station, Kovilpatti to implement the E.P.F Provisions on and from 01.01.1975. The University sent the reply dated 12.10.1991 explaining the non-applicability of the Act to the University. Accordingly, the Agriculture Research Station, Kovilpatti and others were required to file the writ petition in WP(MD) No.11445 of 1994, etc. regarding the applicability of the E.P.F Act. This Court passed an order dated 01.12.1999 directed the University to pay E.P.F. Contribution from 01.01.1988 and also directed to remit the amount as estimated by the University within eight weeks from the date of service of notice of demand. The Registrar of Tamil Nadu Agricultural University issued order dated 29.08.1996 for the implementation of EPF schemes from 01.09.1996. Therefore, this petitioner implemented the EPF Schemes from 01.09.1996 and also recovered the employee's share of contribution from the workers from 01.09.1996 and remitted along with employer's share and administrative charges every month.

3.The learned counsel for the petitioner further submitted that the Tamil Nadu Agricultural University is fully funded by the Government of Tamil Nadu.

Therefore, the petitioner has sought permission and fund from the Government for the implementation of EPF schemes. After sanctioning of fund vide G.O.Ms.No.140, Agriculture (AU) Department, dated 27.03.1997, the University issued orders dated 17.04.1997 for remittance of EPF contribution from 01.01.1991 to 31.08.1996. The entire contribution for the period from 01.01.1991 to 31.08.1996 has been released from the petitioner. As per the order passed in WP(MD) No.12668 of 1997, Tamil Nadu Agricultural University did not recover the employee's share of contribution from the workers for the entire period from 01.01.1988 to 31.08.1996 and both the shares were paid by the university from the Government funds. The second respondent has issued the Notice No.PDC/TN/TRY/Circle:12/TN/32348/2011 dated 16.06.2011/20.06.2011 levying damages of Rs.2,38,930/- alleging delay in remittance of EPF contribution for the period from 01.01.1991 to 31.08.1996 and the second respondent has also issued another order No.PDC/TN/TRY/Circle: 12/TN/32348/2011 dated 16.06.2011/20.06.2011 levying interest of Rs.2,03,332. Against this payment, the petitioner filed WP(MD)No.10322 of 2011, which was ordered by this Court directing the respondents to consider the explanation submitted by the petitioner and pass orders on the basis of the order passed in

W.A.No.639 of 2005 and various writ petitions. However, without considering the petitioner's claim, the impugned order is again passed demanding a sum of Rs.4,42,262/- as damages. The learned counsel further submitted that in W.A.No. 639 of 2005, this Court has considered several aspects with regard to the claim of EPF dues, damages and interests and ordered that the payment of demand of damages from the University, is unreasonable. Without considering the dictum laid down in W.A.No.639 of 2005, the present impugned order is passed. Therefore, this Writ Petition is filed.

4.In response, the learned counsel for the respondents would submit that the earlier show cause notice issued seeking damages, was challenged by the petitioner by filing WP(MD)No.10322 of 2011. This Court directed the respondents to consider the explanation offered by the petitioner and take appropriate decision. Accordingly, enquiry was conducted and sufficient opportunity was given to the petitioner. After hearing the submission of the petitioner and taking into consideration the direction issued in WP(MD)No.10322 of 2011, order of payment of damages was passed in accordance with law and proper perspective. He further submitted that against the order passed under

Section 14(B) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, appeal remedy is provided to the Tribunal under Section 7(I) of the said Act. Without resorting to the appeal remedy, filing this writ petition, is unjustified and the same is liable to be dismissed.

5.This Court has considered the rival submissions and perused the records.

6.It is seen from the submissions made by the learned counsel appearing for the petitioner that the petitioner University is a research centre. It is not in dispute that contribution has been paid with the delay. It is also seen from submissions made by the learned counsel for the petitioner that the petitioner university is fully funded by the Government of Tamil Nadu for its existence and other activities. The Employees Provident Funds contribution itself was paid only after the sanctioning of funds by the Government. A similar matter came before this Court for consideration in W.A.No.639 of 2005, wherein this Court ordered as follows:-

> *6. As rightly contended by the learned counsel appearing for the appellant, the damages are penal in nature. That apart, as far as the appellant University is concerned, the funding agency is the Government of Tamil Nadu and the first*

respondent University cannot generate its own funds for this purpose. Only after the sanction and release of funds by funding agency alone, the appellant can remit the amount. Admittedly the funds were sanctioned by the State Government only by G.O.Ms.No.140 Agriculture Department dated 27.03.1993. Immediately, after this the contribution were remitted. It is to be noted at this stage as far as the appellant university is concerned, it remitted the employees contribution as well as the employers contribution without recovering the share of the employees contribution from the workers. As such, the of either wanton or wilful delay does not arise in remitting the P.F contribution.

7.Subsequent me the orders of the Honourable Apex Court passed on 16.01.1991 and this Court on 01.012.1999, directions were issued to pay the E.P.F contribution of various Institutions working under the control of the Tamil Nadu Agricultural University as well as Tamil Nadu Agricultural University and in the case of the appellant, the contribution to be made by the employee were also paid by the appellant itself. That apart, the contribution made by the appellant from 01.01.1988 to 31.08.1996 was also collected by the respondent and after a lapse of 6 years under the impugned proceedings, damages were levied. Yet another factory to be noted is that the E.P.F authorities were demanding the contribution in *respect of all the institutions as a matter of policy. Consequently, the appellant University had sought for sanction of funds from the Government of Tamil Nadu to make the payment since the University being an establishment of the Government of Tamil Nadu and is depending upon the government for the funds. Admittedly, the funds were sanctioned by G.O.Ms.No.140 dated 27.03.1997 and immediately orders were issued on 17.04.1997 for the implementation of the E.P.F scheme with retrospective effect from 01.01.1991 and contributions were made from 01.01.1991 to 31.08.1996 thereafter. As far as the appellant is concerned, it is not the case of the respondent that having collected the contributions from the workers, the same has been paid belatedly. On the other hand, basing on the orders of this Hon'ble Court, they were restrained in fact from recovering the employees share of contribution from the workers consequent to the retrospective implementation of the E.P.F scheme. That apart, as per Section 14-B and also as per the judgment relied on by the learned counsel for the petitioner reported in AIR 1979 SC 1803 (Organo Chemical Industries Vs. Union of India) the appellant should have been given and opportunity of being heard before levying the damages but admittedly, in this case, no such opportunity is given. Since the damages are penal in nature, the same cannot be mechanically levied and rigid formula* *cannot be followed in the matter of levying of damages. The respondent should have considered the various reasons which were genuine and bonafide. But a perusal of the order of the authorities shows, without considering the fact, when the casual labourers of the appellant University were brought to the ambit of E.P.F Act and when directions were given with regard to the contribution to be paid for the casual labourers, simply quoting the provisions of the Act, the damages are penal in nature and the same cannot be levied without considering the fact whether any default is committed by the appellant willfully or not.*

8. Taking note of the date of the orders of this Court and the Hon'ble Apex Court wherein directions were given to the appellant as well as to the institution under the control of the appellant with regard to the payment of E.P.F to the casual labourers of the employees of the appellant and also taking note of the fact that the entire contributions were paid by the appellant and also the date of sanction of the fund by the Government which is a funding agency of the appellant, we feel that the impugned order, awarding the damages is unreasonable.

7.The petitioner University is similarly placed. It has no funds of its own and the funding agency is the Government of Tamil Nadu. It is only after sanction and release of funds by the funding agency, the petitioner can remit the amount of the Employee Provident Fund, dues, damages, interests etc. The delay in remitting the contribution is not wanton nor wilful. This question was rightly answered that in view of the fact that the petitioner university has no fund of their own and it depends upon the Government of Tamilnadu for funds, there is no question of wanton and willful delay for remitting the EPF contribution. In this view of the matter, it was finally held that the damages are penal in nature and the same cannot be mechanically levied, without considering the fact that whether the default is committed by the university willfully or not and ultimately found that the damages ordered is fully unreasonable.

8.As already stated that the petitioner filed WP(MD)No.10322 of 2011 challenging the show cause notice issued earlier. After considering the decision of law, this Court ordered as follows:-

> 5.---- *As the petitioner has sufficient time upto 29.09.2011, to submit his explanation, it is open to the petitioner to bring it to the notice of the respondents, the orders passed by this Court in various writ petitions as well as the order made in W.A.No.639 of*

2005, dated 06.09.20007 and submit his explanation. The Regional Provident Fund Commissioner, Trichy, shall consider the explanation in proper perspective, in the light of the orders passed by this Court and take appropriate decision as regards the further course of action should be taken.

9.This specific direction was issued to consider the explanation submitted by the petitioner and pass orders in W.A.No.639 of 2005 and orders were passed by this Court in other writ petitions to consider the explanation before deciding the matter in proper prospective. The provision of the impugned order shows that opportunity was given to the petitioner during enquiry. It is seen that SMT.Dr.S.Geetha, Professor and Head of the Department, attended the enquiry and requested to waive the damages and submitted a letter stating that the High Court quashed the orders of Assistant Provident Fund Commissioner in the case of Tamil Nadu Agricultural University and Sugar Cane Research Station, Sirugamani and sought the same relief. However, this claim was rejected stating only reason that those judgments would apply only to the specific case and not to the petitioner. This observation of the authority in the impugned order is clearly without understanding the order passed in WP(MD)No.10322 of 2011. Despite the order passed in WA(MD) No.639 of 2005 and other orders were brought to the notice of the authority, the authority has not chosen to discuss the order and explanation as to how those orders to not apply to the case of the petitioner.

10.Order further reads that the authority carefully examined the facts and direction given by the Madras High Court in WP(MD)No.10322 of 2011 and all the explanations/reply furnished by the establishment in proper prospective. However, this Court finds that there is no mention about what are the explanations given by the establishment and what are the direction given by the High Court and how it is applied or does not apply to the facts of the case. Without discussing and dwelling on this issue, the impugned order is passed. It is nothing but cryptic and a non-speaking order without properly understanding the direction issued by the this Court in WP(MD) No.103 of 2011. Therefore, this Court is of the considered view that this order is liable to be set aside.

11.As rightly pointed out by the learned counsel for the respondents that against the order passed under Section 14(B) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, appeal remedy is provided under

Section 7(I) of the Act to the Tribunal. However, without resorting to the appeal remedy, the petitioner straight away filled this petition before this Court. This approach is also not right. In this view of the matter, while setting aside the order impugned dated 07.06.2012/12.06.2012, passed in No.SDC/TN/TRY/32348/ Circle:12/SRO-TRY/2012, this Court directs the petitioner to file statutory appeal under Section 7(I) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, before the appellate authority within a period of three months from the date of receipt of a copy of this order. On filing of the appeal, the concerned Authority is directed to dispose of the same without taking into consideration the aspect of limitation and pass appropriate orders on merits and in accordance with law. Accordingly, this petition is disposed of. It is open to the parties to raise whatever factual and legal contention available to them before the appellate authority. No costs. Consequently, connected miscellaneous petition is closed.

23.08.2022

Index : Yes / No
Internet : Yes / No
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G.CHANDRASEKHARAN, J.

CP

Order made in
W.P.(MD)No.8774 of 2012

Dated:
23.08.2022