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.2469 of 2013

The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
No.1, Lady Doak College Road,
Chokkikulam, Madurai – 625 002. ... Petitioner

vs.

1.The Presiding Officer,
The Employee's Provident Appellate Tribunal,
New Delhi.

2.M/s.Sri Adisankara Spinning Mills Private Limited,
Ottangampatti, Murunellikottai (Post),
Vedasandur, Dindigul District. ... 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 in

ATA.No.707 (13) 2011, dated 03.02.2012, passed by the 1st respondent tribunal and to quash the same.

For Petitioner	: Mr.A.John Xavier
For R1	: Tribunal
For R2	: Mr.M.Elanchezhian

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ORDER

This writ petition is filed for issuance of Writ of Certiorari, to call for the records relating to the order in ATA.No.707 (13) 2011, dated 03.02.2012, passed by the 1st respondent tribunal and to quash the same.

2. The brief facts as stated in the affidavit is that the 2nd respondent is an establishment covered under the Employees' Provident Fund Act, 1952. The EPF organization conducted an inspection and it was noticed that the establishment was “under reporting” the number of employees. Even regular workmen were falsely shown as apprentice, hence summons was issued to the establishment. After conducting an enquiry and after affording opportunity, the EPF organization passed an order, dated 15.09.2011, for a period from April 2007 to September

2009, determining the contribution to the tune of Rs.4,02,998/- payable for the un-enrolled employees who were shown as apprentices. Aggrieved over the same, the establishment filed an appeal before the Tribunal. The Tribunal vide order, dated 03.02.2012, has allowed the appeal. Aggrieved over the same, the petitioner organization has filed this writ petition.

3. Heard Mr.A.John Xavier, learned Counsel appearing for the petitioner and Mr.M.Elanchezhian, learned Counsel appearing for the second respondent and perused the records placed before this Court.

4. This Court have given the anxious consideration on the issue raised in this case.

5. The contention of the EPF organisation is that the second respondent has shown more number of employees engaged in their mills but in the EPF contribution statements shows less number of employees. The difference being

the so called apprentice and the apprentice are engaged in regulation production of the establishment and the EPF organisation submitted that the apprentice are more in number than the regular employees. For these two reasons, the EPF organization is claiming the apprentice also should be calculated in the category employees and the second respondent is bound to pay the contribution. The claim of the EPF organisation is that the establishment under the guise of trainees has engaged the regular employees.

6. But the Tribunal has held that the enquiry officer had come to the conclusion the alleged trainees are engaged for doing the regular work of employees on the ground that such employees were engaged by the appellants to discharge the normal duties of workers in the appellant's establishment. The Tribunal has categorically rendered a finding and held that the investigating officer has not recorded any evidence to establish the facts that the apprentice are regular employees in the establishment. The enquiry officer without taking into account the scheme framed by the establishment to engage the apprentice has

come to the erroneous conclusion. In fact, the enquiry officer noted the fact that the specified period of 3 years is prescribed for completion of the apprentice training and after apprentice training they were issued certificates. The enquiry officer further noted that some of the apprentices have left the training course before completion of 3 years and have not been awarded with a certificate whereas the apprentice who were in training were paid stipend on basis of actual. Since some of them left the training, the same cannot be considered sufficient to treat an apprentice as employees. Unless a clear finding is rendered to establish that the apprentices were not getting any training but engaged to discharge all the duties of an employee of the establishment, the same cannot be accepted. The Tribunal has also held that there is no iota of evidence to establish that the apprentices were engaged in actual activities. Also there is no evidence to state that the said apprentices are drawing remuneration and other benefits from labour laws other than the stipend. Therefore, the Tribunal Court has come to the conclusion that there is no sufficient evidence to prove otherwise and set aside the order passed by the EPF organization. The Tribunal followed the judgment rendered in the case of ***Regional Provident Fund Commissioner, Mangalore Vs. Central Aercanut and Coca Marketing and Processing Cooperative Limited, Mangalore,*** reported in ***(2006) 2 SCC 381.*** The Hon'ble Supreme Court has held that under Section 2F of the EPF Act, defines an employee to included apprentice but at the same time, makes it exclusion to the case of apprentice engaged under the Apprentice Act or under the employee standing orders under which it describes a learner who is paid allowances during the period of training.

7. Therefore this Court is of the considered opinion that the Tribunal has rightly held that there is no evidence at all and therefore, the claim of the EPF organisation is not sustainable. Hence, this Court is confirming the order passed by the Tribunal. For the above reasons, the writ petition is dismissed. No costs.

Index : Yes / No

Internet : Yes

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S.SRIMATHY, J

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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.

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