BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P.(MD)Nos.20220, 20221 of 2021
and
W.M.P.(MD)Nos.16889, 16891 of 2021

Thiruchirappalli District Central Cooperative Bank
Staff Provident Fund Trust,
Rep. by its Trustee / General Manager,
No.1, Fort Station Road,
Thiruchirappalli. : Petitioner in both WPs

Vs.

1.The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
Sree Complex, D-Block,
No.18, Madurai Road,
Thiruchirappalli.

2.The Assistant Provident Fund Commissioner (Exemption),
Employees Provident Fund Organization,
Regional Office,
Sree Complex, D-Block,
No.18, Madurai Road,
Thiruchirappalli.

3.The Branch Manager,
IDBI Bank,
No.120, Dukes Complex,
Bharathiyar Salai, Cantonment,
Thiruchirappalli - 620 001.
: Respondents in both WPs

PRAYER in WP(MD)20220/2021: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned orders passed by the second respondent vide No.TN/TRY/EXEM/TN/4175/2019, dated 13.11.2019 and the consequential order of attachment issued by the second respondent vide No.CB/TRY/RO/Exem/4175/8F/2021, dated 12.01.2021 and quash the same and consequently direct the respondents 1 & 2 to refund the amount of Rs.6,46,956/- to the petitioner Trust with interest at the rate of 12% per annum.

PRAYER in WP(MD)20221/2021: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari to call for the records relating to the impugned notice in No.TN/TRY/EXEM/TN/4175/2020, dated 24.12.2020 and the consequential impugned order vide No.TN/TRY/4175/EXEM/RO-TRY/2021, dated 20.07.2021 so far as relating to surcharge is concerned and the consequential order of attachment vide No.CB/TRY/RO/Exem/4175/8F/2021, dated 20.10.2021 issued by the second respondent and quash the same.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.G.Dharmaraja
for R.1, R.2
Mr.Rajesh Saravanan
for R.3
(In both WPs)

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COMMON ORDER

These writ petitions are filed by the petitioner Trust challenging the surcharge order levied by the second respondent and the consequential order of attachment passed by the second respondent.

2.Since the issues involved in both the writ petitions are one and the same and the parties are also same, these writ petitions are taken up together and are disposed of by way of this common order.

3.The first respondent, by the impugned orders, held that there are certain deviations in the investments made by the petitioner Trust during the financial years 2017-18, 2018-19 and called upon the petitioner Trust to pay the surcharge amount. The petitioner has not paid the amount as per the terms of the notices and therefore, the subsequent orders of attachment were passed. Aggrieved over the same, the petitioner Trust has preferred these writ petitions.

4.Learned Counsel for the petitioner submitted that the petitioner Trust is a registered Society registered under the Tamil Nadu Co-operative Societies Act and governed by the Tamil Nadu Co-operative Societies Act and Rules. The petitioner Trust is an exempted establishment under Section 17(1)(a) of the Employees Provident Fund and Miscellaneous Provisions Act read with Paragraph No.79 of the EPF scheme. They are maintaining a separate account and the provident fund contributions would be invested in the schemes as per the directions issued by the Union Government from time to time. The second respondent has issued the proceedings as if there are certain deviations in the investments made by the petitioner Trust for the financial years 2017-18 and 2018-19. But, it is not so. In fact, the second respondent has neither conducted any enquiry nor provided any opportunity of hearing before passing the impugned order.

5.He further submitted that the EPF and Miscellaneous Provisions Act, 1952, is not applicable to the Co-operative Societies registered under the provisions of Tamil Nadu Co-operative Societies Act and the same has been settled in various decisions. The statutory benefits like the gratuity, provident fund and other benefits are extended to the Trust's employees through the provisions of the special by-laws and are being maintained by way of a separate fund under the Central Co-operative Bank concerned under the Co-operative Societies Act. The Co-operative Societies Act is a special act enacted for regulating the affairs of the Co-operative Societies in the State and as per Sections 78 & 79 of the Act, the Society through its by-law shall establish a separate account for the purpose of settling the provident fund and gratuity to its employees.

6.He further submitted that the Board of Trustees are following the pattern of investment notified by the Union Government from time to time. It is not the case of the respondents that the funds were mismanaged or that the Board of Trustees have caused any loss to the Trust. It is also not the case of the respondents that any members of the Trust has made any grievance of non-payment of their provident fund or lower rate of interest than the interest notified by the Government. Moreover, as per condition no.

17 of Appendix-A of the Scheme, for the failure to make investments as per the directions of the Government, the Board of Trustees, either jointly or separately, are liable for surcharge. Therefore, attaching the funds of the Trust under the guise of surcharge is not proper, as it would adversely affect the interest of the Trust's members.

7.Learned Counsel for the first respondent submitted that though exemption has been granted to the petitioner Trust, as per Section 17(1)(a) of the EPF and Miscellaneous Provisions Act, it is subject to the provisions under Section 17(4) of the Act. The exemption granted can be cancelled as per the provisions under Section 17(4) of the Act. The petitioner Trust is bound by the terms and conditions laid under the Paragraph no.27(a)(a) of the EPF Scheme and as per the scheme, the exemptions granted under Section 17 of the Act shall be subject to the terms and conditions as given in Appendix A.

8.He has also referred to the condition no.17 of Appendix A to Paragraph no.27AA of the EPF scheme, which is extracted as follows:

> *"The Board of Trustees shall invest the monies of the provident fund as per the directions of the Government from time to time. Failure to make investments as per directions of Government shall make the Board of Trustees separately and liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representatives."*

9.He further submitted that from the returns filed by the petitioner Trust, they have found certain deviations in the pattern of investment made by the Trust. Such deviations took place in the past four years and in fact, similar surcharge orders were issued for the financial years 2003-04 to 2016-17 and the surcharge amount was remitted by the petitioner Trust to the first respondent. Before issuance of the impugned surcharge orders, show cause notices dated 25.11.2018, 25.01.2019, 01.05.2019 and 01.01.2020 were issued to the petitioner Trust and they were directed to invest the monies as per the pattern of investment as stipulated in the Act and Scheme and as per the Notification in S.O.1433(E), dated 29.05.2015. The reply given by the petitioner Trust was considered and rejected and thereafter, the respondents have passed the impugned orders.

10.This Court considered the rival submissions made on either side and perused the available materials.

11.As against the surcharge orders levied by the first respondent, these writ petitions are filed. Even before the issuance of surcharge orders, the respondents have issued show cause notices on various dates, for which, the petitioner has also responded. Therefore, it cannot be said that there is a violation of principles of natural justice.

12.The petitioner Trust is exempted from the provisions of EPF Scheme, as per Section 17(1)(a) of the EPF and Miscellaneous Provisions Act, 1952. However, the exemption is subject to Section 17(4) of the Act. It is the responsibility of the Department to verify the records of the exempted members and to take necessary action as per the scheme. As per condition no.17 of Appendix-A, the Board of Trustees are expected to invest the amount of provident fund as per the direction of the Union Government from time to time. Failure to make such investments would make them liable to be surcharged by the Central Provident Fund Commissioner. The respondents have conducted an inspection and found that there are certain deviations by the petitioner Trust while making the investments. Therefore, they have issued show cause notices, followed by which, the impugned surcharge orders and attachment orders were issued.

13.The petitioner, even in the reply to the show cause notices, has not stated that the amount was deposited as per the directions of the Union Government. Admittedly, similar such levies were also imposed on the petitioner Trust for the financial years 2003-04 to 2016-17 and they have paid the surcharge amount. Though the petitioner took a ground that there was no loss caused to the members of the Trust or that there was no complaint from the members, the fact remains that there are certain deviations in the investment pattern.

Under such circumstances, this Court is not inclined to entertain these writ petitions. Accordingly, both the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.

02.12.2022

Index : Yes / No
Internet : Yes
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B.PUGALENDHI, J.

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