BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.8627 of 2014

P.Murugesan ... Petitioner

vs.

1.Secretary,
Ministry of Labour and Employmnt,
Government of India,
Shram Shakti Bhawan,
Rafi Marg, New Delhi-110 001.

2.Regional Employees Provident Fund
Commissioner (Delhi North),
28, Wazirpur Industrial Area,
New Delhi-52.
(through its RPFC, Narimedu,
Madurai-624 002)

3.R.P.Gupta,
Chairman,
National Horticulture Research
and Development,
Foundation Provident Fund Trust
(NHRDF PF Trust),
47, Pankha Road, Institutional Area,
Janakpuri, New Delhi – 110 058. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct 1st respondent to cancel the 3rd respondent exemption granted under section 17(1) (a) of the EPF & MP Act - 1952 and subsequently, to transfer the accounts of the 3rd respondent into the 2nd respondent control and to issue the annual statement of accounts pertaining to PF Account no DL/CPM//0006491/98 for the year 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14.

For Petitioner	: Mr.P.Murugesan Party in person
For R1	: Mr.V.Malaiyendran
For R2 `	: Mr.K.Murali Shankar
For R3	: Mr.V.O.S.Kalaiselvan

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O R D E R

This writ petition is filed for issuance of a writ of Mandamus, to direct 1st respondent to cancel the 3rd respondent's exemption granted under section 17(1) (a) of the EPF & MP Act - 1952 and subsequently, to transfer the accounts of the 3rd respondent into the 2nd respondent control and to issue the annual statement of accounts pertaining to PF Account no DL/CPM//0006491/98 for the year 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14.

2.The petitioner who appeared as party in person was an ex-employee dismissed from service of the National Horticultural Research and Development Foundation. According to the petitioner the reason for his dismissal is that he had not cooperated to one Dr. R.P.Gupta, the Director of the Foundation. The contention of the petitioner is that the Director is cheating the farmers by procuring the seeds from open market and packed as seed produced under the scheme of National Horticulture Mission of Government of India and selling it. Therefore, the petitioner raised an Industrial dispute with appropriate authority and the same is pending.

3. The petitioner submitted that he is a member of the Provident Fund Trust run by the National Horticulture and Development Foundation. This trust is approved by the Income Tax authority and also Government of India, Ministry of Labour and Employment under Section 17(1)(A) of the Employment Provident Fund Act. The petitioner contended that the Director who has enmity with the petitioner did not provide the petitioner the Annual Statement of Provident Funds Accounts for the financial years 2008-2009, 2009-2010, 2010-2011, 2011-2012,

and 2012- 2013 in spite of many requests. The petitioner stated several allegations against the said Research Institution and the said Director of the Institution.

4. The petitioner applied to the 3rd respondent for withdrawal of non-refundable advance from Provident Fund to meet out his family expenses. The 3rd respondent compelled the petitioner, vide letter, dated 10.08.2010, to close the PF accounts with the Trust by submitting Form 19 and 10-D so that Dr. R.P. Gupta may be escape from Industrial Disputes pending on his illegal termination order. The contention of the petitioner is that the 3rd respondent denied the petitioner's allegation purposefully in order to deny the petitioner’s lawful claim. The said 3rd respondent had retired on attaining superannuation of 58 years, but, violating the service condition applicable to the respondent institution, the 3rd respondent’s tenure is being extended from time to time from his actual retirement date, i.e., on 31.12.2008. The institution is having a separate scheme and was exempted from the applicability of the EPF Act. Since the petitioner claim to retain his PF accounts with the 3rd respondents was denied, the petitioner is seeking to cancel

the exemption granted to the Institution and consequently transfer his EPF account to the 2nd respondent and allow this writ petition.

5. The 3rd respondent has filed a counter affidavit wherein it is stated that the petitioner has no legal right to file the petition. The jurisdiction for the institution is within New Delhi and the petitioner cannot file this petition before Madurai Bench of Madras High Court. Therefore, the preliminary objection of jurisdiction is raised as one of ground before this Court. The petitioner was terminated from service in the year 2001. Subsequently, reinstated in 2005 and again terminated in the year 2010. The petitioner had challenged the termination order. Further, the arrears of wages claimed was also dismissed by the Court. When the petitioner was working at the Kurnool Office of Andhra Pradesh, he was transferred to Varanasi of Uttar Pradesh and subsequently, he was terminated from the services for unauthorized absence from 2010. However, the petitioner raised an industrial dispute before the Labour Court, Trichy. The jurisdiction of Labour Court entertaining the dispute is also under challenge before this Court in a Civil Revision Petition. The petitioner itself so far has filed around 53 cases

against the 3rd respondent before various courts including the present writ petition. The petitioner has the habit of filing cases against the 3rd respondent in one way or other and is habitual forum hunter. The 3rd respondent is scrupulously following the various provisions of EPF Act. The petitioner has repeatedly made several allegations against the 3rd respondent without basis. The prayer in the writ petition is not maintainable. Since the petitioner has sought to cancel the exemption granted to the 3rd respondent, the exemption was granted after scrutinizing the records. The 1st respondent as per the order, dated 31.12.1983, has granted exemption. There are more than 200 employees including the staffs working with the 3rd respondent all over India and they are covered under the EPC Scheme. The contributions are remitted periodically and there is no complaint whatsoever by the employees. The petitioner who is not in service of the 3rd respondent has no legal right to file the writ petition.

6. The counter affidavit filed by the 3rd respondent also states that the allegation in Para 2 of the petition is nothing but utter white lie. The 3rd respondent is having their own Research and Development institute and

undertakes research activities of export oriented horticultural crops primarily onion and garlic along with other vegetables to increase the output of the farmers in particular and the country in general. The allegation that there is an enmity with the petitioner is nothing but utter falsehood. The petitioner after termination and after withdrawal of the amount from his credit, the petitioner if so desires can verify the annual statement of Provident Fund accounts of the 3rd respondent. The 3rd respondent has taken objection, since the petitioner referred the 3rd respondent singularly as if he is a sadist. It is also improper to use the words against the 3rd respondent as if he is harassing others illegally. The petitioner who was the General Secretary of the Union and also one of the Trustee (employee side) is still practicing and is earning much more than what if he earned while working with the 3rd respondent. The allegation that the PF Trust account is not transparent is false. The PF account of the petitioner for the financial year 2009-2010 was sent to him for his reference. Therefore, the allegation in para 6 is utter false. If the petitioner found any deficiency in the transparency of his account, the petitioner should have informed the 3rd respondent for perusal and for further action. The 3rd respondent also periodically submitted the mandatory returns to the EPFO then and there for verification. The 2nd respondent deputed the officers concerned to investigate into the complaints of the petitioner. In the investigation, it is found that the accounts are duly maintained by the 3rd respondent. The grievance of the petitioner that there was refusal to grant non-refundable loan was duly considered and an amount of Rs.1,50,000/- was disbursed to him on 21.10.2010. Further, his Provident Fund Accounts annual statements for the financial year 2009-2010 was also sent for perusal. The investigation officer sent the report to the EPFO with a copy to the petitioner. Therefore, the allegation of bribery is nothing but utter lie. If the investigation done by 2nd respondent is found not proper, it is open to the petitioner vindicate the same. The 3rd respondent also submitted that it is false and frivolous allegations that the 3rd respondent by threatening the Provident Fund Trustee has withdrawn Rs.26,00,000/-. As long as the 3rd respondent is the Director of NHRDF and is receiving salary as employee, he is also a member of Provident Fund Trust and the saving is permitted under rules and regulations and accordingly he can also contribute as a member. He is also at liberty to withdraw the amount accumulated in his credit as per Trust as eligible like any other member of the PF Trust. The 3rd respondent is an Income Tax assessee and periodical Income Tax assessment is made. The Income Tax authority is the appropriate party who is to decide the assessment of Income Tax of the 3rd respondent. Further, the petitioner repeatedly has made general allegations by reproducing the provision of the Income Tax Act without assigning any reasons. There is no violation of any provisions of law and the allegations that the Trustees out of fear has granted the amount have no basis. Therefore, the 3rd respondent prayed to dismiss the writ petition.

7.The petitioner has filed a reply affidavit to the counter affidavit filed by the 3rd respondent. In the reply the same allegations narrated in the affidavit is reproduced in the reply affidavit.

8. The 2nd respondent have filed a counter affidavit stating that there is no violation as alleged by the petitioner. The 3rd respondent institution is having a separate scheme and hence the institution is exempted from the provisions of EPF Act. On allegation by the petitioner, the investigating officers are sent to the 3rd

respondent institution and it was found that there is no violation of any Rules. Therefore, the petitioner's allegation is utter false and the prayer in the writ petition cannot be entertained and the 2nd respondent prayed to dismiss the writ petition.

9. Heard Mr.P.Murugesan, the petitioner party in person, Mr.V.Malaiyendran, learned Counsel appearing for the 1st respondent, Mr.K.Murali Shankar, learned Counsel appearing for the 2nd respondent and Mr.V.O.S.Kalaiselvan, learned Counsel appearing for the 3rd respondent and perused the records.

10. The learned Counsel appearing for the 3rd respondent circulated the accounts statement of PF settlements for the year 2008-2009 to 2013-2014. On perusal of the same, it is seen that the payments of the petitioner's amount are regularly paid until 2013-2014. The contention of the 3rd respondent is that the petitioner has attained superannuation in the year 2010. Thereafter, for three years, the accounts would be maintained and interest would be paid until

2013-2014 and the same is lying with the 3rd respondent institution. However, the petitioner is refusing to withdraw the amount. Hence, the same amount is not paid to the petitioner. The 3rd respondent also submitted the statement of Bank Accounts of the petitioner, wherein it is seen that the amount that is payable to the petitioner are credited to his account. Hence, the allegations stated by the petitioner is incorrect.

11. The party-in-person who appeared before this Court submitted that the 3rd respondent is retaining the amount right from 2013-2014 onwards and they have not paid any interest to the amount from 2014 onwards. The petitioner submitted that as per the scheme, from the date of retirement, the 3rd respondent institution will pay the interest until 3 years. It is seen that the petitioner was dismissed from service in the year 2010 and the third respondent has credited interest until 2013-2014 that is until three years. Therefore, this Court is of the considered opinion that the third respondent has not committed any illegality.

12. The claim of the petitioner is that since he had challenged the order of dismissal from service, then the third respondent ought to credit interest until the adjudication is over. It is seen that the petitioner was dismissed from service in the year 2010 itself, which was challenged before the Labour Court and it was dismissed. Subsequently, the petitioner preferred a writ petition before this Court challenging the said order which was dismissed. However, in writ appeal the case was remitted back for fresh consideration. In the second round of litigation, the same was dismissed with an observation to reconsider the particular issue raised by the petitioner and the petition is pending before the Labour Court for reconsideration. Since the petition is pending for reconsideration, the petitioner is claiming that the third respondent should credit interest until the adjudication is over.

13. On considering the rival submissions, this Court is of the considered opinion, the petitioner is entitled to the amount which is credited to his name until 2013-2014. The petitioner has refused to receive the amount and is demanding the interest amount beyond 2013-2014 and hence the 3rd respondent could not pay

the amount to the petitioner. Therefore the allegation that the third respondent has not paid the amount is erroneous, since because the petitioner is demanding interest beyond 2013-2013 and refused to receive the amount, but thrown the blame as if the third respondent has not paid the amount. Hence the claim of the petitioner is incorrect and the third respondent has not committed any illegality.

14. Therefore, this Court deems it fit to direct the 3rd respondent to pay the amount which is pending in the credit of the petitioner until 2013-2014. The 3rd respondent shall pay the amount at the earliest and the petitioner is directed accept the amount without fail.

15. Now, the claim of the petitioner is that he is entitled to payment beyond 2013-2014. However, the issue of his dismissal from service is pending before the Labour Court. At this juncture, the petitioner's claim cannot be allowed and he is not entitled to interest beyond 2013-2014. Since the entitlement itself is questionable, when the issue of dismissal from service is pending before the Labour Court, the petitioner cannot demand to pay the interest beyond

2013-2014. If the petitioner's plea in the case challenging the dismissal of service is allowed by the Labour Court then, the petitioner would be entitled to the amount, until then, the petitioner is not entitled to the said amount. Therefore, the claim of the petitioner is left open for the period beyond 2014 and the petitioner is at liberty to challenge it after the disposal of the petition before the Labour Court.

16. For the reasons stated above this Court is directing the third respondent to pay the amount which is payable for the period until 2013-2014 at the earliest. The petitioner shall accept the said amount without fail. If the petitioner declines to accept, the petitioner is not be entitled to any interest for the period from 2010 to 2014.

17. The prayer of the petitioner to cancel the EPF scheme of the third respondent is dismissed.

18. With the above said observation, the writ petition is disposed of. No costs.

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Internet : Yes
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