BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2022

CORAM

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

W.P.(MD)No.8697 of 2014
and
M.P.(MD)No.1 of 2014

Arulmigu Thirumalai Kumarasamy Thirukoil,
Panpozhi-627 807,
Shenkottai Taluk,
Tirunelveli District. ... Petitioner

vs.

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Bhavishya Nidhi Bhavan,
N.G.O.'B' Colony,
Tirunelveli-627 007. ... Respondent

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 of the respondent passed in No.TN/TNY/55680/PDC/2/2013, dated 12.05.2014 and to quash the same.

For Petitioner : Mr.S.Manohar
For Respondent : Mr.Murali Shankar
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ORDER

This writ petition is filed for issuance of a writ of Certiorari, to quash the the order of the respondent, dated 12.05.2014.

2.The petitioner is a temple, a religious institution governed by the provisions of the Tamil Nadu Act 22 of 1959. The temple is an establishment under the Employment Provident Funds and Miscellaneous Provisions Act, 1952. The respondent has levied damages against the belated remittance of Provident Fund for the period 03.2006 to 09.2011 and penal damages has been ordered under Section 14 B of the Act. The petitioner submitted an explanation for delayed remittance of the amount and it was stated that the delay was only due to financial difficulties of the temple and the PF contributions of Rs. 1,76,760/ has been remitted and it was also stated that the temple did not have funds even to pay the staff salary. Even the poojas could not be performed in the temple. Hence there was delay due to paucity of funds and it was not intentional. Thereafter, the temple income has increased the dues are being paid in time. Therefore, the petitioner temple prayed before the respondent not to claim damages for belated payment of dues the respondent without considering the objections and also the financial status of the petitioner. But, the respondent had imposed the damages. The claim of the petitioner is that the respondent did not consider the plea that the petitioner is not an industry and it is a religious institution. The respondent has held that the petitioner has paid dues belatedly from 09.2007 and has sent notice only in the December 2013 and has levied damages totally Rs. 1,43,047/-. The respondent has also levied Rs.75,742/- as interest under Section 7 Q of the Act and the said amount has been paid by the petitioner and the respondent is taking steps to recover the amount stated in the impugned order. Aggrieved over the same, the present writ petition is filed.

3. The respondent has filed counter affidavit stating that the writ petition is not maintainable and it is premature. The petitioner is having an alternative remedy of filing an appeal before the Appellate Tribunal. The petitioner is covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 with code number TN/55680. The establishment is under the purview of the Act voluntarily under Section 1(4) of the Act, the employer and the majority of employees in relation to the establishment had agreed that the provisions of this Act should be made applicable to the establishment and an application to that effect was filed. Accordingly, it was covered with effect from 01.03.2006 and was notified in the Official Gazette dated 13.03.2010. The petitioner had failed to remit within the time limit stipulated by the respective schemes.

(1) Provident Fund Contribution in Account No.1

(2) Family Pension Fund / Pension Fund contribution in Account No. 10

(3) Administrative charges in Account No. 2 (Iv) Employees' Deposit Linked

Insurance contribution and administrative charges thereon in accounts nos. 21 and 22 for the period 3/2006 to 09/2011.

Thereafter, by Section 14 B of the Act, notice was issued. The hearing was conducted on various dates. The petitioner during the hearing contended that the delay was not intentional and it was due to financial difficulties only. Thus, prayed to waive the damages and interest. There is no power to decrease the damages or waive the damages as per the provisions of the Act. The respondent has levied the damages in accordance to the provisions of Employees' Provident Fund Act. The details of payment payable for the months, amount payable and the delay period, etc., were duly furnished in the statement enclosed along with the notice to the petitioner for belated remittance. Hence, the respondent prayed to dismiss the writ petition.

4. Heard Mr.S.Manohar, learned Counsel appearing for the petitioner and Mr.Murali Shankar, learned Counsel appearing for the respondent and perused the records placed before this Court.

5. It is an admitted fact that the petitioner temple has paid the amount along with interest. The petitioner has challenged the levy of damages in the present writ petition. The reason for the delay is that the petitioner temple is not financially viable. Since there was no finance, the salary was remitted belatedly after the remittance of the salary. When the finance was improved, the petitioner temple has paid all the contributions. Subsequently, the temple has paid the interest as well. According to the petitioner, the petitioner temple may be a listed temple but it is not having proper financial viability and when the income is received, the petitioner is paying the amount. The petitioner has also submitted that the devotees of the temple has increased due to the access of road to the temple. Thereafter, the temple was receiving income. Because of these reasons,

the temple could not pay the salary as well as the other statutory benefits to the workers. Moreover, the temple is owning certain lands. The temple was not receiving income from the temple lands. Subsequently, the temple has received income. Based on all these developments, the temple could pay the salary as well as the statutory benefits. Hence, the petitioner prayed to either waive or impose lesser rate of interest under Section 14 B. It is an admitted fact that income was not received from several lands belonging to the temple. Several actions are being taken to rectify so that the temple would get regular income. In the present case, the temple is situated in the hill where the road access was under repair and after rectification the devotees started coming to the temple.

6. It is so unfortunate that by taking the contribution of the devotees and from the rental income of land belonging to the temple, the temples are being managed. Under such circumstances, paying the liability itself difficult, now claiming damages from the temple would be an additional burden on the temple.

By taking all these factors into consideration, this Court is inclined to waive the damages for the period from 03.2006 to 09.2011.

7. For the stated above the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes

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