BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on: 06.12.2021
Pronounced on: 07.01.2022
CORAM
THE HONOURABLE MRS.JUSTICE **S. SRIMATHY**
W.P.(MD)Nos.21256 to 21260 of 2015

The Assistant Provident Fund
Commissioner,
Employee's Provident Fund Organization,
Sub - Regional Office,
Sree Complex,
No.18, Madurai Road,
Tiruchirapalli-8. ... Petitioner in all cases

vs.

1.The Presiding Officer,
Employees Provident Fund
Appellate Tribunal,
New Delhi.

2.M/s. Shrine Basilica of Vailankanni,
represented by its Secretary of
Diocese of Tanjore Society,
Bishop's House-P.B.No.204,
Thanjavur. ... Respondents in all cases

PRAYER in W.P.(MD)No.21256 of 2015: 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 common order passed by the first respondent in ATA No.138 (13) 2014, dated 16.06.2014 and to quash the same as illegal and against law.

PRAYER in W.P.(MD)No.21257 of 2015: 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 common order passed by the first respondent in ATA No.139 (13) 2014, dated 16.06.2014 and to quash the same as illegal and against law.

PRAYER in W.P.(MD)No.21258 of 2015: 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 common order passed by the first respondent in ATA No.140 (13) 2014, dated 16.06.2014 and to quash the same as illegal and against law.

PRAYER in W.P.(MD)No.21259 of 2015: 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 common order passed by the first respondent in ATA No.141 (13) 2014, dated 16.06.2014 and to quash the same as illegal and against law.

PRAYER in W.P.(MD)No.21260 of 2015: 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 common order passed by the first respondent in ATA No.142 (13) 2014, dated 16.06.2014 and to quash the same as illegal and against law.

In all cases:

For Petitioner	:	Mr.M.Palanimuthu
For R1	:	Tribunal
For R2	:	Mr.R.Manohar

COMMON ORDER

The Assistant Provident Fund Commissioner has filed these Writ Petitions to quash the impugned orders passed by the first respondent, i.e., the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi, dated 16.06.2014.

2.The brief facts are that the second respondent Church is a place of worship and religious rites are carried out according to the description of the rules and regulations of the Christianity. The Church is administered by the Diocese of Tanjore Society, which is registered under the Societies Act. On 28.04.1992, the management voluntarily furnished the particulars of Church Canteen wherein it has been stated that the Canteen was employed with 23 persons on October 1991.

3.On the application of the respondent Church, the following branches were allotted EPF number under Section (1)(4) of the Act in which the Church Workers, Canteen workers, Administrative Office, Mary Book Department and Lodges were included. Once it is opted then, all the provisions of the Act would be applicable to the establishment. Since the second respondent Church was covered under the Act and a 7(A) notification dated 25.03.2011 was issued by the authority to produce all relevant records for determination of duties and date was fixed for enquiry on 27.04.2011. Even after 30 chances, the establishment neither appeared nor submitted any records. Hence, a final notice, dated 12.02.2014, was issued to attend the enquiry on 10.04.2014. It is to be noted that after coverage of the Act, if the number of persons employed falls below 20, then also the establishment continued to be covered and could not escape from the liability to pay the contribution.

4.On the basis of the particulars furnished by the management on 28.04.1992, the Church Canteen engaged 23 persons. Hence, the Act is applicable and the Society is having 67 workers. But, the second respondent without attending the 7(A) enquiry along with records and documents prematurely filed all appeals before the first respondent in ATA No.138(13)/2014 to 142(13)/2014. The first respondent without considering the case of the organization and without looking into the primary stage of the issues allowed, the appeal by setting aside the enquiry notice, dated 12.02.2014. Since it is in enquiry stage, the organization has come forward challenging the order passed by the appellate authority.

5.The second respondent has filed a counter affidavit, stating that the second respondent has submitted a letter to the petitioner stating that the EPF is not applicable to their organization, since the Government of India has exempted the religious institutions and Churches from the purview of EPF Act. The petitioner without jurisdiction has initiated the enquiry under 7 (A). The second respondent is a Church and it is a place of worship. The activity of the Church is spiritual and not temporal. It is also registered under Section 12 A(a) of the Income Tax Act, 1961 and exempted from Sales Tax. The Church is not carrying out any commercial activity and it belongs to a minority community. The persons employed in the Church are volunteers and volunteers have given in writing that they are serving on their own free will.

6.The second respondent also referred to the order, dated 28.06.1999, passed by the Commissioner of Labour, holding that Shrine is not doing any business and survives on the donation from the devotees. Hence, the Shops and Establishments Act, 1974, is not applicable and the Labour Court has also held that the Church is not an industry, vide order, dated 31.03.2013. The Government of India, vide gazette notification in issue No.27, dated 26.06.2005 to 02.07.2005, exempts certain establishment from the operation of the said Act. Therefore, the EPF Organization cannot issue any notice under 7(A). The establishment employed more than 20 will come under the purview and the second respondent volunteers are below 20 in number. They have relied on certain judgments.

7.The petitioner has filed a rejoinder affidavit for the counter affidavit. Based on the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred as the Act) and the Schemes framed there under the establishment comes under the purview of the Act and it came with effect from 01.10.1991. The Canteen was brought under the purview of the Act, since it had fulfilled the statutory requirements for coverage. But, the second respondent voluntarily submitted a request from the majority for the employees employed in the Mary Book Depot, Church workers, Administrative Office and Lodge to come under the purview of the Act. Once voluntarily submitted for the coverage under the Act, the second respondent cannot now seek to quit from the purview of the Act. The exemption available in Section 16 of the Act and the indication of the Central Government are irrelevant, since the exemptions are against the compulsory and statutory coverage of the establishment under the Act.

8. Heard Mr.M.Palanimuthu, learned Counsel appearing for the petitioner and Mr.R.Manohar, learned Counsel appearing for the second respondent.

9. On hearing the arguments and perusing the documents it is seen that the second respondent was brought under the purview of the Act through voluntarily written consent. The notice was issued under 7A, which is only a notice, which is put to challenge. As rightly pointed out it is under enquiry stage only. The first respondent has set aside the notice and allowed the appeal, whereby the petitioner was not allowed to enquiry into the issue, which is a quasi judicial proceeding. Therefore this Court is of the considered opinion that the notice is challenged and it is only in enquiry stage and the challenge is premature.

10. The petitioner relied on amendment, dated 14.05.2010, wherein, it is stated that if the Universities, Colleges, Schools and Scientific institutions are being carried on against charges or fees from the students then, they are not exempted from the purview. But the second respondent relied on Clause B, where it is stated that the religious institutions are exempted from the purview. On perusing the amendment, it is seen that the same is coming into effect after 2010. But the second respondent has submitted a letter voluntarily accepting to come under the purview of the Act. Moreover whether the church is collecting any fees, comes under factual matrix and evidence ought to be submitted. As rightly pointed out by the petitioner, it is only an enquiry notice. The second respondent is at liberty to explain everything before the authority. Therefore, this Court holds that it is premature to conclude at the notice stage. The second respondent is directed to appear before the petitioner organization and place all documents. The petitioner shall grant a personal enquiry to the 2nd respondent and thereafter, the petitioner is directed to pass a speaking order.

11.Therefore, the impugned order is set aside and the Writ Petition is allowed on above terms. No costs.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

To

1.The Presiding Officer,
Employees Provident Fund
Appellate Tribunal,
New Delhi.

2.The Secretary of Diocese of
Tanjore Society,
Shrine Basilica of Vailankanni,
Bishop's House-P.B.No.204,
Thanjavur.

+1 CC to M/s.K.MU.MUTHU, Advocate (SR-886[F] dated 07/01/2022)

W.P.(MD)Nos.21256 to 21260 of 2015

07.01.2022

MGJ(31.01.2022) 5P 4C