



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.03.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P. (MD)No.7931 of 2016

WEB COPY

The Central Board of Trustees,
Employees Provident Fund Organisation,
through its Regional Provident Fund Commissioner,
Regional Office, Lady Doak College Road,
Chokkikulam, Madurai - 2. ... Petitioner

vs

1. M/S.Sree Mangayarkarasi Mills (P)Ltd.
Represented by its Director
Puliyankulam,
Near Silaiman,
Madurai - 625 201.

2. The Presiding Officer,
Employee's Provident Fund Appellate Tribunal,
New Delhi. ... Respondents

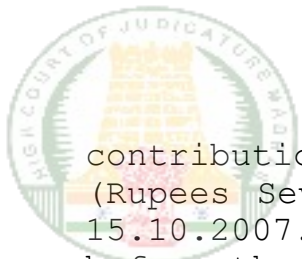
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order of the second respondent herein in his proceedings bearing A.T.A.821 (13)2014 dated 24.11.2014 and set aside the same and confirm the order passed by the Assistant Provident Fund Commissioner under Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act in his proceedings No.TN/RO/MDU/16645/Circle 5/PDC/LD/2014 dated 08.08.2014.

For Petitioner : Mr.A.John Xavier
For Respondents : Mr.S.Karthik for R1
Tribunal for R2

O R D E R

This Writ Petition is filed challenging the order passed in A.T.A.No.821 (13) 2014, dated 24.11.2014 and confirmed by the Assistant Provident Fund Commissioner.

2. The first respondent is an Establishment covered under the EPF Miscellaneous Provisions Act, 1952. The first respondent failed to enroll certain number of its employees under the said Act for the "Provident Fund Scheme" for the period from 04/2005 to 01/2006 by keeping them under the list of trainees. An enquiry under Section 7A was initiated to determine the issue. After the enquiry it was found by the petitioner that the said employees were found to be regular employees of the Establishment and the Provident Fund



contribution payable were assessed to the tune of Rs.7,49,000/- (Rupees Seven Lakh Forty Nine Thousand only) under 7A order, dated 15.10.2007. The first respondent has challenged the said order before the second respondent in A.T.A.No.764(13) / 2007 in which the order passed by the Assistant Provident Fund Commissioner was confirmed by the Tribunal, vide order, dated 23.07.2010 and challenging the same, the first respondent has filed a writ petition in W.P.(MD)No.11782 of 2010 and the same was dismissed on 20.09.2010. Only thereafter, the Establishment has remitted the Provident Fund amount. Since there was a delay in remitting the amount under Section 14-B of the Act, the first respondent is liable for levy of damages. Hence the petitioner has initiated enquiry under Section 14-B. Thereafter, final order was passed by the Assistant Provident Fund Commissioner on 08.08.2014 under Section 14-B to the tune of Rs.6,21,454/- (Rupees Six Lakh Twenty One Thousand Four Hundred and Fifty Four only) for the period from 03/2002 to 01/2014. The first respondent has preferred an appeal to the second respondent in A.T.A.No.821(13)2014 and the said appeal has been allowed by the second respondent, vide order, dated 24.11.2014 by setting aside the order passed by the Assistant Provident Fund Commissioner, dated 08.08.2014. Aggrieved over the order of the second respondent, the present writ petition is filed.

3.The first respondent has filed a counter affidavit stating that the petitioner's Assistant commissioner who passed the impugned order under Section 14-B of the Act, also from the same Department cannot prefer an appeal against the order of the EPF Appellate Tribunal. The petitioner has not been authorized by the Central Board of Trustees to file this petition. The Regional Provident Fund Commissioner is not an affected party based on the impugned order. The 14-B order which was challenged before the second respondent was originally passed by the Assistant Commissioner a statutory authority exercising quasi-judicial powers under Section 14-B of the Act. The order, dated 08.08.2014 was passed in exercise of his powers under Section 14-B which was set aside by the second respondent. The petitioner has filed a petition under Section 14-B where there is an inordinate delay of four years and that too there are mistakes in the calculation. Thereafter, a revised notice, dated 28.04.2014 was issued. Again some errors are there in the second notice. The second respondent has filed another counter affidavit before the Tribunal. In spite of the same, the Assistant Commissioner passed an order, dated 08.08.2014 which contains wrong facts and irrelevant facts. The second respondent has rightly stated that even though there is a limitation prescribed under Section 14-B, the power to impose damages ought to be exercised within a reasonable time from the date of default. Hence the first respondent prayed to dismiss the writ petition.

4. Heard Mr.A.John Xavier, learned Counsel appearing for the
<https://hcservices.courtsonline.gov.in/hcservices44/> Mr.S.Karthik, learned Counsel appearing for the first



respondent.

5. It is seen from the records that the first respondent has not paid the EPF for the period from 01/2006 to 15/2007 and there is no default even prior to this date or after to this date. According to the first respondent, because of the issue pending before the Tribunal and High Court there was a delay in paying the amount. According to the petitioner, the first respondent has allowed his regular employees to continue the service under the guise of Apprenticeship and the first respondent has not paid the amount to the petitioner. The said issue was settled in the year 2010. The petitions were pending before the Tribunal and the High Court until 20.09.2010. Since the petitions were pending and the rights of the parties were determined on 20.09.2010, the levy of damages will not arise during that period. Hence the impugned order is liable to be interfered with.

6. Therefore, this Court is of the considered opinion that the damages levied during this period is inappropriate. The reasons stated by the Tribunal may be on limitation. However, this Court has granted relief based on the facts and circumstances of the case. Therefore, the order passed by the Tribunal is confirmed.

7. Hence, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

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.

To

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



W.P.(MD)No.7931 of 2016

+1 CC to M/s.S.KARTHIK, Advocate (SR-12608[F] dated 16/03/2022)

W.P. (MD)No.7931 of 2016
15.03.2022

SG (CO)

KB (25.04.2022) 4P 3C