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W.A.No.2530 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No.2530 of 2013 and

M.P.No.1 of 2013

M/s.GVK Emergency Management
& Research Institute
Govt KG Hospital for Women & Children
Chennai 600 005
Rep. by its Head -HR

.. Appellant

-VS-

1. The Regional Provident Fund Commissioner-II
Employees Provident Fund Organisation
37, Royapettah High Road,
Chennai 600 014.

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

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 06.11.2013 made in W.P.No.30052 of 2013 directing the petitioner to pay 50% of Rs.1,25,00,000/- [Rupees One Crore Twenty Five Lacs only] within a period of four



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weeks from the date of receipt of the order copy and the balance 50% within four weeks

thereafter and allow the Writ Petition.

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For Appellant : Mr.L.Chandrakumar
for Mr.K.Rajasekaran
For Respondent : M/s.T.R.Sundaram (R1)

J U D G M E N T

This Writ Appeal has been preferred by the Management, challenging the order of the learned Single Judge in W.P.No.30052 of 2013 dated 06.11.2013, in setting aside the order of the 2nd Respondent dated 07.10.2012.

2. The 1st Respondent determined the provident fund contribution on allowances paid to regular workmen at Rs.3.94 crores and Rs.4.50 lakhs in respect of stipend paid to trainees, against which, the Appellant/Writ Petitioner approached the 2nd Respondent/Appellate Tribunal and the Appellate Tribunal by an order dated 07.10.2013 directed the Appellant/Writ Petitioner to deposit 40% of the amount as determined by the 1st Respondent. Being aggrieved, the Appellant/Petitioner filed the Writ Petition in W.P.No.30052 of 2013. The learned Single Judge, by an order dated 06.11.2013, ordered the Writ Petition with the following observations:

"5. Considering the fact that the petitioner approached the tribunal and got direction to deposit 40% and also considering



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the fact that other companies got absolute stay from the Division Bench of this Court, this Court would like to reduce 40% which is equal to 1.50 (Rupees one crore and fifty Lakhs Only) crores to Rs.1.25 (One crore and twenty five lakhs only) crores and the petitioner is directed to pay 50% of the 1.25 (One Crore and twenty five lakhs only) within a period of four weeks from the date of receipt of a copy of this order and the balance 50% within four weeks thereafter.

6. The impugned order is quashed and the writ petition is ordered with the above directions. No costs. connected miscellaneous petition is closed."

3. The learned counsel for the Appellant would submit that when the Appellate Tribunal has got powers to waive the entire pre-deposit amount in terms of Section 7-O of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952(in short 'the Act'), the Appellate Tribunal has erred in granting partial waiver. According to the Appellant, the Appellate Tribunal ought to have exercised its discretion and allowed the waiver application in toto, thereby, entertaining the appeal without any pre-deposit.

4. Learned counsel appearing for the 1st Respondent would submit that in terms of Section 7-O of the Act, the Appellate Tribunal has got discretionary powers and that the same has been exercised by the Appellate Tribunal by reducing the deposit from 75% to 40% and the learned Single Judge has also reduced the deposit from Rs.1.50 crores to Rs.1.25 crores and therefore, the employer is liable to deposit the amount as directed by the learned Single Judge and that there should not be any further reduction.



5. Heard both parties.

6. Considering the issue involved, it would be relevant to extract Section 7-I

and 7-O of the Employees Provident Fund Act, for useful reference, which read as under:

“7-I. Appeals to Tribunal.—(1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order. (2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.”

“7-O. Deposit of amount due, on filing appeal.—No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent. of the amount due from him as determined by an officer referred to in section 7A: Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.”

7. Further, as per Rule 7 of The Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997, the employer has to prefer an appeal within a period of 60 days and a further period of 60 days is available if the Appellate Tribunal is satisfied that the employer was prevented by sufficient cause from preferring the appeal within the prescribed time i.e, the total time limit is 120 days. In the case on hand, the appeal



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has been filed in time. However, without depositing 75% of the amount determined by the 1st respondent, the Appellant herein had preferred the appeal along with an application for waiver under Section 7-O of EPF Act. The Appellate Tribunal, after considering the contentions of both parties, had reduced the pre-deposit to be made to 40% of the determined amount and same has been further reduced by the learned Single Judge from Rs.1.50 crores to Rs.1.25 crores.

8. Though this Court is empowered to waive the entire deposit, we are not inclined to do the same, as we find that there is no perversity in the order passed by the learned Single Judge. However, taking note of the fact that the Appellant is an ambulance service provider, we reduce the amount to 30% as an exceptional case and it cannot be treated as a precedent.

9. At this stage, the learned counsel for the Appellant requested three months' time to deposit the amount ordered by this Court and sought permission to deposit the same in three equal instalments.

10. Considering the fact that the Appellant is only an ambulance service provider, we direct the Appellant to pay the amount now ordered by this Court in three equal instalments. The 1st installment will commence on **01.06.2023**, followed by the 2nd and 3rd instalments on the same date of the subsequent months.



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11. We make it very clear that in case the Appellant fails to comply with the aforesaid modified order, the order of the authority stands restored and the Employees Provident Fund Organization can take steps for civil arrest. When the order of the Authority as modified by the Appellate Tribunal and further modified by the Single Judge and Division Bench of this Court is not complied with, in the eye of law, there is no interim order in force against the order of the Authority. In such circumstances, the Employees Provident Fund Organization is entitled to go ahead in taking coercive steps, and pendency of an Appeal is not a bar for civil arrest.

12. **This Writ Petition is disposed of with the above directions.** No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.] [J.S.N.P., J]
18.04.2023

Index: Yes / No
Internet: Yes / No
arr/aeb



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To

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and
J.SATHYA NARAYANA PRASAD.,J

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