IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.14231 of 2011
and M.P.No.1 of 2011

Assistant Provident Fund Commissioner,
Office of the Regional Provident
Fund Commissioner,
Bhavishya Nidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore – 641 018. ...Petitioner

Vs.

1. M/s.Sathiesh Engineering and
Gear Industries,
27-A, Venkatasamy Naidu industrial Area,
Bharathi Colony, Peelamedu,
Coimbatore – 641 004.

2. Employee Provident Fund
Appellate Tribunal,
Scope Minar, Core-II,
4th Floor, Lakshmi Nagar,
New Delhi – 110 0092. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the proceedings of second respondent dated 25.03.2011 in Ref.No. ATA No.383(13) of 2010, and quash the order passed therein by issue of a Writ of Certiorari.

For Petitioner : Mr.C.Kulanthaivel
Standing Counsel
For Respondents
For R1 : Mr.P.Paramasivadoss
For M/s.Profexs Associates
R2 : Tribunal

ORDER

The writ petition has been filed challenging the order dated 25.03.2011 passed by the Employees Provident Fund Appellate Tribunal, New Delhi, in Ref.No. ATA No.383(13) of 2010, thereby allowing the appeal filed by the first respondent.

2. Heard the learned counsel appearing on either side and perused the material placed before this Court.

3. The first respondent is an establishment covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"), with effect from 01.04.1992. The application of the provisions of the Act was made based on the information furnished by the first respondent in the format for furnishing particulars required under the Act, dated 10.06.1996. In the said statement, the first respondent had admitted that they had engaged 43

employees as on 01.04.1992, as per the salary registers seized by the Enforcement Officer. Later, it was found that the first respondent had engaged 41 employees even on 01.01.1992 itself. Therefore, the date of applicability under the Act was preponed to 01.01.1992, based on the finding of the Enforcement Officer.

4. Accordingly, the coverage memo was issued to the first respondent on 25.06.1998 and the same was acknowledged by them. Despite the issuance of coverage memo, the first respondent failed to comply the provisions under the Act. Therefore, the petitioner issued summons dated 18.09.1998, for enquiry to determine the amount payable by the first respondent, as contemplated under Section 7A of the Act. Accordingly, on receipt of the said notice, enquiry was conducted and one of the partner of the first respondent attended the enquiry. However, after taking several number of adjournments, finally he failed to appear. On the strength of the documents submitted by the first respondent and the report submitted by the Enforcement Officer, the petitioner's authority passed order dated 16.11.2000, under Section 7A of the Act.

5. Aggrieved by the same, the first respondent filed review as contemplated under Section 7B of the Act. Even in the review, though several opportunities were given to the first respondent, the first respondent failed to appear and as such, the petitioner's authority rejected the review and confirmed the order passed under Section 7A of the Act. It is also seen that though the first respondent failed to appear before the enquiry, the petitioner's authority passed order after perusing the records produced by the first respondent such as salary figures at the time of submission of coverage papers.

6. Further on perusal of records produced by the first respondent, the salary figures furnished at the time of submission of coverage papers are totally at variance with each other. Therefore, the petitioner's authority found that the first respondent had fabricated records with a view to lessen its liability. The first respondent also failed to explain the obvious discrepancies in the statements/documents furnished by it. The first respondent also omitted to attend the enquiry conducted to determine the dues under Section 7A of the Act. Both the orders passed under Section 7A and 7B of the Act are appeal able under Section 7-I of the Act.

7. It is relevant to extract the provisions under Section 7-I of the Act as follows :-

> *"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."*

However, the first respondent failed to file any appeal as against the order passed under Sections 7A and 7B of the Act. Therefore, the order passed under Section 7A of the Act, has become final.

8. However, the first respondent failed to remit the dues determined under Section 7A of the Act. Therefore, the Recovery Officer invoked the provisions under Section 8B – 8G of the Act, to recover the

determined dues. Before passing an order of recovery, the Recovery Officer had issued show cause notice to the first respondent to show cause why they should not be arrested and committed to civil prison by notice dated 08.07.2002. The said notice was challenged by one of the partner of the first respondent before this Court in W.P.No.34669 of 2002 and this Court by an order dated 09.09.2009, dismissed the writ petition with liberty to the first respondent to submit its explanation before the petitioner and also directed the petitioner to afford sufficient opportunity including personal hearing and pass orders. As per the direction issued by this Court, after giving sufficient opportunity to the first respondent, the authorized officer rejected the explanation submitted by the first respondent by an order dated 21.06.2010.

9. Aggrieved by the said order the first respondent filed an appeal before the second respondent in ATA 383(13)2010, with the following payers :-

"10. Relief Sought

In view of the facts mentioned in Para (6) above, the appellant prays for the following relief:-

To set aside

a)Proceedings Order bearing

No.TN/CBE/34375/ENF/CC. 1 (16)/2010 Dated 21.06.2010 passed by Regional Provident Fund Commissioner as per direction of Honble High Court order dated 30.03.2010 in W.P.No 34669 of 2002.

b)Proceeding Order bearing C6/TN/CB/cc.1(6)/ 34375/ENF/2000 dated 16.11.2000 under Section 7-A directing the establishment to pay a sum of Rs.20,59,993.70(Rupees Twenty Lakhs fifty nine thousand nine hundred and ninety three and paise seventy only) on account of PF Insurance Fund, Employees pension Fund and Administrative Charges and interest under 7 Q for Rs.2,26,183/-for the period up to 29.9.2000."

10. Thus the first respondent not only filed the appeal as against the order dated 21.06.2010 and also filed the appeal challenging the order dated 16.11.2000 passed under Section 7A of the Act. Unfortunately, the Tribunal viz., the second respondent herein without considering the detailed counter filed by the petitioner mechanically allowed the said appeal and set aside both the orders passed under Section 7A of the Act and also the rejection order of the explanation for the show cause notice.

11. As stated supra, the orders passed under Section 7A or 7B or 7C or Section 14B of the Act are appealable orders under Section 7-I of the Act. Therefore, the order passed by the petitioner's authority, as directed by this Court in W.P.No.34669 of 2002, that too challenging the show cause notice issued for arrest, under Section 8B of the Act, is not an appealable order. In fact, already the first respondent filed review as against the order passed under Section 7A of the Act and the same was also rejected. Aggrieved by the same, the first respondent did not prefer any appeal.

12. Section 7(2) of the Employees Provident Funds Appellate Tribunal (Procedure) Rule, 1997 says that any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any authority, may prefer an appeal within a period of 60 days from the date of issuance of the said notification or order. Provided that the Tribunal may if it is satisfied that the appellant was prevented by the sufficient cause from preferring the appeal within the prescribed period, extend the said person by further period of 60 days.

13. Therefore, in order to save the limitation, the first respondent cleverly filed appeal as against the order passed by the petitioner ans also as against the order passed under Section 7A of the Act, after the period of ten years. However, after the period of 120 days, the Tribunal has no jurisdiction to entertain any appeal as against the order passed by the authority under the Act.

14. That apart, the first respondent raised grounds in the appeal before the second respondent that in the matter of coverage and deduction of employees share only from the existing employees, the authority concerned is duty to bound to act in a jurisdiction manner and the order must disclose that there was in fact application of mind on the part of the authority to the relevant facts and circumstances of the case. Further the first respondent had employed only 12 employees for the period of January, 1994 to December 1998. Therefore the question of coverage does not arise and the first respondent not deducted any contribution from the employees. From January 1999, the first respondent industry itself was not exist and all the employees were left out after received their legal dues as per the Settlement under Section 18(3) of the Industrial Dispute Act.

15. On perusal of the documents, the format submitted by the first respondent with particulars of employees is very clear that it had 43 person as on 01.04.1992 which subsequently, increased to 90 persons by April, 1996. It has particularly declared that a sum of Rs.1,27,388/- was disbursed as salary for the month of April, 1996. Therefore, it is clear that the first respondent had engaged more than 43 persons as its employee. Further the salary figures furnished by the first respondent at the time of submission of coverage papers are totally at variance with each other, which reads as follows :-

Year	Balance Sheet (Rs.)	Form-12A (Rs.)	Statement submitted at the time of coverage by the first respondent (Rs.)
1992-93	1,98,492	1,57,121	4,16,436.89
1993-94	Not submitted	Not submitted	5,26,155.91
1994-95	8,49,747.93	1,57,814,	8,06,531.68
1995-96	16,40,889	1,58,073	12,98,531.10

16. It is apparent that the first respondent had fabricated records with a view to lessen its liabilities. In fact, the first respondent failed to explain the obvious discrepancies in the statements/documents furnished by it. Therefore, on merits also the petitioner considered all the documents which were produced by the first respondent and rightly

determined the dues under Section 7A of the Act. It was also confirmed in the review filed by the first respondent under Section 7B of the Act. It become final since no appeal was filed by the first respondent as against the said order. Therefore, the Tribunal has no jurisdiction to entertain any appeal after the period of 120 days as against the order passed under Section 7A and 7B of the Act.

17. The order dated 21.06.2010, passed by the Regional Provident Fund Commissioner, Coimbatore, as directed by this Court in W.P.No.34669 of 2002 by an order dated 09.09.2009, in respect of the show cause notice issued by the Recovery Officer of the petitioner, under Section 8B – 8G of the Act. The said show cause notice was challenged by the first respondent before this Court and this Court directed the Provident Fund Commissioner to consider the explanation submitted by the first respondent and pass appropriate orders after giving opportunities. Thereafter, the Regional Provident Fund Commissioner, Coimbatore, passed order dated 21.06.2010, thereby rejected the explanation submitted by the first respondent for the show cause notice issued. In fact, the Recovery Officer passed order under Section 8B of the Act.

18. In view of the above discussions, the impugned order passed by the second respondent cannot be sustained and it is liable to be quashed. Accordingly, the order dated 25.03.2011 passed by the Employees Provident Fund Appellate Tribunal, New Delhi, in Ref.No. ATA No.383(13) of 2010, is hereby set aside. The petitioner is at liberty to proceed against the first respondent to recover the dues if any, in the manner known to law.

19. Accordingly, the Writ Petitions stand allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to cost.

31.10.2023
(½)

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

rts

To

1. Employee Provident Fund
   Appellate Tribunal,
   Scope Minar, Core-II,
   4th Floor, Lakshmi Nagar,
   New Delhi – 110 0092.

G.K.ILANTHIRAIYAN. J,

rts

W.P.No.14231 of 2011
and M.P.No.1 of 2011

31.10.2023
(½)