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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

THE HON'BLE MR. JUSTICE K.KUMARESH BABU

W.P.No.2443 of 2011

Regional Provident Fund Commissioner,
Tamil Nadu & Pondicherry States,
No.20, Royapettah High Road,
Chennai – 600 014.

...Petitioner

Vs.

1.The Tamil Nadu Civil Supplies Corporation Limited
Rep. by its Chairman & Managing Director,
No.42, Thambusamy Road, Kilpauk,
Chennai – 600 010.

2.The Presiding Officer,
Employees Provident Funds Appellate Tribunal,
Camp Court Kochi,
7th Floor, 60, Skylark Buildings,
Nehru Palace, New Delhi – 110 019. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd respondent relating to order passed in ATA No.132(13)2004, dated 03.02.2010 and quash the same.

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For Petitioner : Mr.K.Ramu

For Respondents : Mr.C.Manohar Gupta for R1
M/s.Gupta & Ravi

R2 – Tribunal

ORDER

The Writ Petition has been filed by the Regional Provident Fund Commissioner being aggrieved against the order passed by the Tribunal by calculating the damages at 5% to be paid by the first respondent.

2.Heard Mr.K.Ramu, learned counsel appearing for the petitioner and Mr.C.Manohar Gupta, learned counsel appearing for the first respondent.

3.The case of the petitioner is that the first respondent herein had not paid the dues of its employees within the time stipulated under the statute and they are liable to pay damages as envisaged under the statute. In view of the delay as per the provisions of Section 14(b) of the statute enables levy of damages on the belated payments. In consonance with the provisions of the enactment, an order was passed by the petitioner which was challenged before the Appellate Tribunal. But the Appellate Tribunal on erroneous consideration of the fact had allowed the appeal filed

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by the first respondent and remanded the matter back to the petitioner to calculate the damages only at 5% and not as per the statute however with usual interest.

4.Learned counsel appearing for the petitioner would submit that the reason assigned by the Appellate Tribunal in modifying rate of interest and restricting to the rate of interest at 5% is wholly without any justification and not backed by any materials that are available on record. Therefore, he would request this Court to interfere with the order of the Tribunal and set aside the same.

5.Countering his arguments, learned counsel appearing for the first respondent would submit that the delay in payment was not willful. He would submit that the first respondent had not remitted the amount in view that this Court had granted a stay of the notification viz., the Employees Pension Scheme issued by the Government in the year 1995. The said stay was vacated only on 26.12.1996. Since there was an order of stay, the first respondent had not paid the statutory dues immediately but they had paid it. This fact has been rightly pointed out by the Appellate Tribunal and had set aside the order of the second respondent and directed calculation of damages at 5% along with statutory interest. He had relied upon judgments of the Division Benches of this Court in W.A.No.25 of 2020 dated 18.08.2022 and W.A.No.2349 of 2022 dated 06.06.2023 in support of his contention and would submit that there is no infirmity in the order passed by the Tribunal.

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6.I have considered the rival submission made by the respective counsels appearing on either side and perused the materials available on record.

7.The first respondent is a fully owned Corporation of the State of Tamil Nadu providing essential commodities to the downtrodden people. The Employees Pension Scheme, 1995 as envisaged by the Government was sought to be implemented by the State of Tamil Nadu which was challenged by the Employees Union of the first respondent and originally a stay was granted. An interim stay was however vacated by the Court on 26.12.1996. Since the statutory dues that were not paid within time, the proceedings have been initiated by the petitioner under Section 14(b) of the enactment and statutory damages were levied by the petitioner.

8.Considering the reason for delay, the Tribunal had set aside the order and had directed the petitioner to recalculate the damages at the rate of 5% along with necessary interest as applicable. Even though the petitioner had submitted that such order had been made without any reason, I find that the Tribunal had applied its mind and had passed the orders impugned in this Writ Petition.

9.In view of such finding, I find no infirmity or irregularity in the orders passed by the Tribunal which requires interference by this Court.

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10.In fine, the Writ Petition is dismissed. There shall be no order as to costs.

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Index: Yes/No
Speaking Order/Non-Speaking Order
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To

1.The Chairman & Managing Director,
Tamil Nadu Civil Supplies Corporation Limited,
No.42, Thambusamy Road, Kilpauk,
Chennai – 600 010.

2.The Presiding Officer,
Employees Provident Funds Appellate Tribunal,
Camp Court Kochi,
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K.KUMARESH BABU, J.

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