IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	**:**	**09.01.2023**
PRONOUNCED ON	**:**	24**.04.2023**

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.No.19177 of 2015

M/s.Periyar University (TN/90790)
Rep. By its Registrar,
Dr.K.Angamuthu ... Petitioner

Vs.

The Regional Provident Fund Commissioner II,
Sub Regional Office,
Employees Provident Fund Office,
Salem. … Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent in 7A notice in Ref.No.TN/CB/SLM/COMP-I/90790/ Applicability/S5/2014, dated 26.06.2014 and quash the same and consequently direct the respondent to pay back the excess amount of Rs.3,61,97,456/- recovered from the bankers of the petitioner with a simple interest of 12% per annum.

For Petitioner :Mr.R.Manoharan

For Respondent :Mrs.R.Meenakshi,
Standing Counsel

ORDER

Seeking to quash the impugned 7A notice made in Ref.No.TN/CB/SLM/COMP-I/90790/Applicability/S5/2014, dated 26.06.2014 and for a further consequential direction to the respondent to pay back the excess amount of Rs.3,61,97,456/- recovered from the bankers of the petitioner with a simple interest of 12% per annum, the petitioner has filed the present writ petition.

2. According to the learned counsel for the petitioner, the petitioner Establishment is an educational institution established by the Government of Tamil Nadu at Salem on 17th September 1997. The petitioner Establishment is functioning under the Periyar University Act 1997 and being administered by the Senate Members under the leadership of Vice Chancellor. The petitioner Establishment is having teaching and non-teaching staff both Governed by the Rules and Regulations framed by the University Grant Commission and under the Fundamental Rules of Tamil Nadu Government as well as by Tamil Nadu Government Establishment Rules and Regulation Act and extended benefits of Contributory Provident Fund.

3. It is averred in the writ petition that the respondent has issued EPF coverage notification to the petitioner for their outsourcing and contract employees on 25/02/2013 with effect from 01/02/2013. The respondent has allotted code number to the petitioner, viz CBSLM/0090790/000. The petitioner Management has placed the above EPF coverage notification to its Finance Committee and Administrative Committee, for approval, to cover all the existing temporary and daily wage employees. While being so, the respondent has issued summons dated 09.05.2013 to the petitioner to appear before the respondent only for finalization of coverage and not to determine the dues, hence, no opportunity was given to the petitioner to defend the quantum of dues. The grievance of the petitioner is that the respondent has issued the orders under 7A of EPF Act on 26.06.2014 determining the dues arbitrarily from 1.03.1998 with retrospective effect and also the respondent has assessed the dues for all employees including left out employees. It is the further grievance of the petitioner that the dues were assessed hypothetically and not on the basis of the actual wages paid. Aggrieved against the same, the petitioner has filed the present writ petition.

4. Per contra, Mrs.R.Meenakshi, learned standing counsel appearing on behalf of the respondent would submit that the petitioner, even on receipt of the coverage memo during February 2013 issued by the respondent, has not remitted the contributions under Section 6 of the Act. Due to the default committed by the petitioner, the respondent had initiated an inquiry under Section 7A of the Act to

decide the date of applicability of the Act and only thereafter, summons was issued to the petitioner to appear on 28.05.2013 with attendance and wages/salary register and other relevant records from the date of set up of the University.

5. Moreover, the impugned order issued by the respondent is an appealable order, under Section 7-I of the Act. According to the learned standing counsel, the petitioner ought to have preferred an appeal before the Tribunal constituted under Section 7-I of the Employees Provident Funds and Miscellaneous Provisions Act 1952 within 120 days.

6. It is further submitted that the operation of the statute depends on its own provisions. Since, the petitioner university had not remitted provident fund dues from the date of set up in respect of the consolidated pay employees, the respondent covered the establishment based on the records submitted by the

petitioner. Further, the learned standing counsel stated that the petitioner had not remitted the dues within the stipulated time given in the proceedings, the Bank Account of the University maintained in Canara Bank, University Campus, Salem, was attached on 25.7.2014 by the Respondent under Section 8F of the Act for Rs.3,61,97,456-00. The Manager of the Canara Bank, forwarded four Demand Drafts for Rs.3,61,97,456/- to the respondent, on 30.10.2014.

7. The learned standing counsel further submitted that the respondent had issued notice dated 3.6.2015 with statement showing the damages and interest payable under Section 7Q and 14B for levying damages for the delay in remittance of provident fund dues and also requested the petitioner to appear before the respondent on 24.6.2015. When Shri. R. Manoharan, advocate appeared before the respondent on 21.7.2015, he had stated that the petitioner University had filed an appeal No.ATA 785(13)2015 before the Employees'

Provident Fund Appellate Tribunal, New Delhi against the notice issued under Section 14 B of the Act. Therefore, the intention of the petitioner University is to drag on the proceedings and hence, prayed for dismissing the petition.

8. Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondent and this Court also perused the materials placed before this Court.

9. The arguments put forth by the learned counsel for the petitioner-University is that, the petitioner Institution falls under exception contained under Section 16(1)(b) of the EPF Act, 1952. Further, temporary and daily wage employees are being employed for certain specific purpose as per service conditions framed by the syndicate members of the University. The temporary staff was paid consolidated pay as per Rules and Regulations and service conditions framed by the University. While so, the EPF coverage Notificiation to the out sourcing and contract employees and the finalization of coverage

including the left out employees from 01.03.1998, is not correct.

10. The learned counsel further contended that the petitioner is not aware of the whereabouts of such left out employees and if the dues are remitted it will not reach the actual beneficiaries. The EPF scheme does not permit the employer to recover the contribution for the retrospective period.

11. It is also argued by the learned counsel that recovery u/s.8F cannot be proceeded with unless recovery certificate as contemplated u/s.8B is issued.

12. The learned counsel further submitted that the deduction of EPF was done immediately after freezing the university account from 01.04.2013 by the orders of Vice Chancellor and thereafter, consent of syndicate was obtained on 29.11.2014. The Registrar or staff might not have given any letter towards the deduction of EPF from the date of 17.09.1997. Therefore, the impugned order dated 26.06.2014 stating that the letter signed by the Registrar of the University to comply the provisions of EPF Act from 01.04.2013 is not correct.

13. The learned counsel, therefore, prayed that in the interest of justice, benefit shall not be extended to those employees who have superannuated, expired, resigned or ceased to be in the employment of the company.

14. On the other hand, the learned counsel for the respondent while supporting the impugned order pointed out that the writ petition is not maintainable in limini since the petitioner university ought to have preferred an appeal before the Tribunal constituted under Section 7-I of Employees Provident Funds and Miscellaneous Provisions Act, 1952 within 120 days.

15. The learned counsel for the respondent in support of her submissions relied on the judgments in W.P.No.3301 of 2015, W.P.No.28363 of 2013 and W.P.Nos.38932 and 38933 of 2016 and submitted that it is clearly stated by this court that petitioner if not filed any appeal within the time prescribed under the

EPF Act, not chosen to prefer any appeal and such a right cannot be now restored by the High Court.

16. The learned counsel for the respondent also submitted that the respondent recovered Rs.3,61,97,456/- under Section 8F of the Act in respect of consolidated pay employees, hence, the petitioner's representation dated 23.06.2015 for repayment of recovered amount is not acceptable.

17. The learned counsel for the respondent brought to the notice of this court that when notice dated 03.06.2015 with statement showing damages and interest payable under Section 7Q and 14B for levying damages for the delay in remittance of PF dues was sought, it was represented by the counsel that petitioner university had filed an appeal before the EPF Appellate Tribunal.

18. No doubt, the respondent-Regional Provident Fund Commissioner passed order under Section 7-A and coercive action under Section 8F has also been taken recovering the entire amount by freezing the bank account of the petitioner university. Now this writ petition is filed to quash the order passed under Section 7-A of the Act dated 26.06.2014 and for a direction to the respondent to pay back the excess amount of a sum of Rs.3,61,97,456/- with 12% simple interest per annum.

19. It is an admitted fact that as against Section 14B notice, the petitioner university filed appeal before the Employees' Provident Fund Appellate Tribunal.

20. While the petitioner university is aggrieved by the order passed by the respondent authority under Section 7-A of the Act, there is no dispute appeal lies under section 7-I of the EPF and MP Act. Section 7-I reads 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 7-A, or Section 7-B [except an order rejecting an application for review referred to in sub-section (5) thereof, or Section 7-C, or Section 14-B, 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."

21. When an independent order is passed by the EPF authorities, making a demand, the employer cannot be totally remediless and certainly, they can file an objection pertaining to computation. The competent authority under the Act while determining the monies due from the employee shall be required to conduct an inquiry and pass an order. An order under Section 7-A is an order that determines the liability of the employer under the provisions of the Act and while determining the liability, the competent authority shall offer an opportunity of hearing to the establishment concerned.

22. It is apparent from a perusal of records that in the order dated 26.06.2014, respondent authority imposed a condition to deposit the amount within fifteen days and as the petitioner failed to deposit within the said period, the respondent authority exercised powers under Section 8-F of the Act and recovered the entire amount by attaching the bank account.

23. In the case on hand, this court cannot go beyond the legislative intent. The amended provisions of EPF and MP Act granted only a limited protection confined to a waiver of damages under Section 14B of the EPF & MP Act in the case of sick industrial company in respect of whom a sanctioned scheme is under implementation. Undoubtedly, High Courts cannot entertain a writ petition under Article 226 of the Constitution of India without exhausing the statutory remedies contemplated under the EPF and MP Act in view of the fact that such a remedy is efficacious and the Special Tribunal is constituted for the purpose of adjudication of disputed issues.The disputed issues are to be adjudicated with

reference to the original records and evidences. Such an adjudiction cannot be done in a writ jurisdiction under Article 226 of Constitution of India.

24. Keeping in mind the settled principles of law, since the issues raised in this writ petition is a disputed question of fact that as to whether the dues payable by the employer for the retrospective period is determined after giving due opportunity to the petitioner university or not and other grounds raised herein, can be decided by the statutory authority in the pending appeal.

25. Since the petitioner university had filed an appeal No.ATA.785(13)2015 before the Employees' Provident Fund Appellate Tribunal, New Delhi, against the notice issued under Section 14B of the Act, this court is of the considered opinion that the grounds raised herein, can be adjudicated before the said Tribunal.

26. In the light of the above reasonings, the relief sought for by the petitioner cannot be granted and the only option would be that the petitioner is bound to pay the EPF contribution. The respondent as per the provisions of the Act, attached the assessed contribution amount and this court, cannot deal with the grounds raised herein and it is for the Appellate Tribunal to decide the issue including the challenge to the retrospective coverage.

27. In view of the above reasonings, this writ petition is dismissed with a direction to the petitioner university to raise all the grounds raised herein before the Appellate Tribunal and substantiate their stand with relevant records. The Appellate Tribunal shall take up the appeal, consider the issues raised before it and dispose of the same within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

sts/nvsri **24.04.2023**

J.NISHA BANU, J.,

sts/nvsri

To:
The Regional Provident Fund Commissioner II,
Sub Regional Office,
Employees Provident Fund Office,Salem.

W.P.No.19177 of 2015

Dated:
24.04.2023