



WP.No.84 of 2018

In the High Court of Judicature at Madras

Dated : 07.9.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.84 of 2018
& WMP.No.79 of 2018

The Purasawakum Permanent
Fund Ltd., rep.by its Whole
Time Director

...Petitioner

Vs

1.The Registrar, Central Government
Industrial Tribunal-cum-Labour
Court, Block 6, B Wing, I Floor,
Shastri Bhavan, No.96,
Haddows Road, Chennai-6.

2.The Assistant/Regional Provident
Fund Commissioner, Employees'
Provident Fund Organization,
No.37, Royapettah High Road,
Opposite Swagat Hotel, Chennai-14.

...Respondents

PETITION under Article 226 of The Constitution of India praying for
the issuance of a Writ of Certiorari to call for the records of the second
respondent culminating in his proceedings under Section 7Q and 14B of the
Employees' Provident Fund and Miscellaneous Provisions Act, 1952 in
Na.Ka.No.TN/(4656)/D-12/MAS/PDC/2016 both dated 07.3.2017 and



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quash the same.

For Petitioner : Mr.V.Raghupathi
For R2 : No appearance

ORDER

This is a petition filed by the petitioner seeking to quash the orders dated 07.3.2017 passed by the second respondent under Sections 7Q and 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short, the Act).

2. The facts leading to filing of this case are as follows :

(i) The petitioner is a reputed nithi company registered under Section 406 of the Companies Act. One Mr.D.Bakthavatchalam joined as a clerk in the petitioner company in 1981. He was retrenched from service on 30.4.2009. Pursuant to that, the employee filed I.D.No.140 of 2010 before the Second Additional Labour Court, Chennai, in which, an award was passed on 11.11.2014 directing the petitioner to reinstate him into service with back wages, continuity of service and all other monetary benefits.

(ii) Thereafter, the petitioner decided to settle the issue by entering into a memorandum of settlement dated 28.1.2015 between them and the



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employee under Section 18(1) of the Industrial Disputes Act, 1947 and reinstated the employee into service with effect from 01.2.2015. Further, the petitioner sent a letter to the second respondent dated 24.2.2015 seeking to activate the employee's provident fund account at the earliest since they reinstated the employee and settled all the benefits to him. But, there was no reply from the second respondent.

(iii) Once again, the petitioner sent a letter dated 08.6.2015 to the second respondent along with the statement of account in respect of the details of contribution towards the employee's provident fund for the period from May 2009 to March 2015. On receipt of the same, the second respondent sent summons to the petitioner dated 04.5.2016 informing them that they made payments after the respective due dates and that they had to pay penalty and interest for the belated payment and fixing the enquiry on this issue on 15.6.2016. In turn, the petitioner sent a reply dated 14.6.2016 to the summons and the then Manager of the petitioner appeared for the enquiry on 15.6.2016 to explain about the award passed by the Labour Court.

(iv) However, to their shock and surprise, the petitioner received a



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notice of demand dated 31.7.2017 from the second respondent. Only on 09.8.2017, the petitioner received the orders dated 07.3.2017 passed under Section 7Q and 14B of the Employees Provident Funds & Miscellaneous Provisions Act, 1952(in short 'the Act'). Challenging the orders dated 07.3.2017, the petitioner filed a statutory appeal under Section 7I of the Act before the first respondent after paying necessary fees. However, the papers were returned with some queries. Though the papers were represented through their counsel giving explanation to the queries, the first respondent, vide proceedings dated 28.11.2017, rejected the appeal papers. In this writ petition, the petitioner challenged the orders dated 07.3.2017 passed by the second respondent under Sections 7Q and 14B of the Act.

3. When the matter came up for admission on 04.1.2018, this Court granted an order of interim stay for a period of four weeks and it has been extended periodically. Further, by order dated 18.7.2018 in WMP.No.79 of 2018, this Court extended the interim order already granted until further orders.



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4. A third party affidavit dated 24.8.2023 has been filed by the employee stating that he retired from the services of the petitioner on 30.6.2021, that after his retirement, as per the memorandum of settlement dated 28.1.2015, he received all the back wages and other monetary benefits including provident fund from the date of his first appointment on 13.5.1981 and that he had no further or other claims against the petitioner.

5. The learned counsel for the petitioner submits that though the said Bakthavatchalam was reinstated by the petitioner with effect from 01.02.2015 as per the memorandum of settlement as per Section 18(1) of the Industrial Disputes Act, 1947, the second respondent passed the proceedings u/s.7Q and 14B of the Act which is *per se* unsustainable. He further submits that the said Bakthavatchalam filed an affidavit before this Court admitting the fact that the entire provident fund amount has been received by him from the petitioner management. Hence he prayed to set aside the orders passed by the second respondent.

6. Heard the learned counsel for the petitioner. Though the second



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respondent entered appearance through a counsel, there is no representation for him today when the matter is called.

7. Admittedly, the petitioner management passed the retrenchment order against the said Bakthavatchalam on 30.04.2009. Challenging the same the said Bakthavatchalam raised the Industrial Dispute in I.D.No.140 of 2010 before the Labour Court and the same was allowed vide order dated 11.11.2014 with a direction to the petitioner management to reinstate the said Bakthavatchalam in service along with continuity of service along with all monetary benefits and backwages. It is the major contention of the petitioner management that though the said Bakthavatchalam was reinstated in the services of the petitioner management, the Employees Provident Fund Authority has initiated proceedings against the petitioner management u/s.7Q and 14B of the Act, which is under challenge in the present writ petition.

8. The issue arises in the present writ petition is whether the petitioner management has paid the PF contributions in favour of the said



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Bakthavatchalam or not. It appears that the said Bakthavatchalam was reinstated in the service with effect from 01.02.2015 and since the employer of the establishment failed to remit the contribution and administration charges payable by them for the period from 2009 till 2015, the second respondent summoned the establishment to appear for enquiry, pursuant to which the Manager of the petitioner establishment appeared for enquiry on 15.06.2016 and submitted a letter dated 14.06.2016 stating that the PF contributions on wages was made belatedly and since there was no proof to show that the petitioner establishment has paid the PF contributions for the period from 2009 till 2015, the second respondent has passed the orders u/s.7Q and 14B of the Act levying interest and damages towards the belated remittances for the period from 5/2009 to 1/2015.

9. Though the orders u/s.7Q and 14B of the Act was passed by the second respondent on 07.03.2017, however, the petitioner has chosen to challenge the said orders before the first respondent after a lapse of 120 days, which is impermissible one and the same was rightly appreciated by the first respondent which cannot be interfered with. However, without



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challenging the order passed by the first respondent dated 28.11.2017, the petitioner has filed the present writ petition challenging the earlier orders passed by the second respondent u/s.7Q and 14B of the Act which is per se unsustainable.

10. Accordingly, this writ petition is dismissed with liberty to the petitioner management to deposit the sum of Rs.2,43,224/- and Rs.4,64,512/- towards damages on belated remittances as per the orders passed by the second respondent dated 07.03.2017 by way of four installments before the EPF authority within a period of four (4) weeks from the date of receipt of a copy of this order if not already deposited without any further interest or damages. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

To

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