IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.5222 of 2023
and
WMP.Nos.5222, 5225 & 22336 of 2023

M/s. Anna University,
Rep. by its Registrar,
Sardar Patel Road, Chennai – 600 025. ...Petitioner

Vs.

1. The Central Government Industrial Tribunal,
1st Floor, B Wing, No.26, Haddows Road,
Shastri Bhawan, Chennai – 600 006.

2. The Regional Provident Fund Commissioner II,
Employees Provident Fund Organization,
Regional Office, Dr.Balasundaram Road,
Coimbatore – 641 018. ...Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in respect of the order dated 12.05.2022 passed by the 1st respondent in EPFA No.36 of 2022 and quash the condition imposed by the 1st respondent vide order dated 12.05.2022 in EPFA.No.36 of 2022 to deposit 45% (i.e. Rs.1,09,84,626/-) of the dues determined by the 2nd respondent, as the EPF & MP Act itself is not applicable as against the petitioner University in view of the decision of the Hon'ble Supreme Court in Yeshwant Grahim Shikshan Sanstha Vs. Assistant Provident Fund Commr., (2017) 5 SCC 579.

For Petitioner : Mr.S.Prabhakaran for
M/s.Paul and Paul

For Respondent : Mr.K.Prabakar, for R2

**ORDER**

This Writ petition has been filed seeking quashment of the condition imposed in the order dated 12.05.2022 passed by the 1st respondent directing the petitioner to deposit 45% of the dues as determined by the 2nd respondent.

2. The case of the petitioner is that, the petitioner university is administered by the syndicate under the chairmanship of Vice Chancellor and it has both teaching and non teaching staff governed by the relevant rules and regulations framed by the University Grants Commission as well as the Tamil Nadu Government. The petitioner is an establishment created by the Government of Tamil Nadu under the State Act wherein the employees are covered under the pension scheme framed by the Government and the petitioner is exempted from the purview of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, the Act). The petitioner also engages contractual employees, if need arises. While so, the

2nd respondent issued a summon dated 16.10.2020 to the regional centre of the petitioner at Coimbatore directing them to appear for determination of the dues in respect of the employees working in the regional centre on contract basis from 01.03.2010 onwards. Thereafter, the 2nd respondent, without considering the materials produced, passed an interim order dated 08.2.2022 under Section 7A of the Act determining a sum of Rs.2,44,10,280/- towards dues and directed the petitioner to pay the said sum within 15 days. As against the said order dated 08.2.2022, the petitioner filed an appeal in EPFA No.36 of 2022 before the 1st respondent, which, ultimately, granted interim stay of the order passed by the 2nd respondent, however, subject to the condition that the petitioner should deposit 45% of the dues as determined by the 2nd respondent. Despite passing the order dated 08.02.2022, the 2nd respondent kept the matter pending stating that they wanted to continue the proceedings in respect of 4 university department campuses, 13 engineering colleges and 2 other regional campuses. The 2nd respondent also addressed the said order dated 08.2.2022 to the petitioner and the respective Employees Provident Fund Organizations seeking to appoint a Nodal Officer in each regional office, in whose jurisdiction, the petitioner's campuses are located in Tamil Nadu. Aggrieved by the action of the 2nd respondent, the petitioner filed W.P.No.2927 of 2023 and this Court, by order dated 02.02.2023, granted an order of interim stay. In the meanwhile, the petitioner, through their syndicate, approached the Government for approval of funds to comply with the order passed by the 1st respondent. Since, the petitioner is an educational institution aided by the Government, the said order dated 12.05.2022 passed by the 1st respondent is liable to be set aside as it will have implication on the administration of the petitioner. Challenging the said order of the 1st respondent dated 12.05.2022, the petitioner management is before this Court.

3. Learned counsel for the petitioner submitted that, since the petitioner is an establishment created by the Government of Tamil Nadu under the State Act wherein the employees are covered under the pension scheme framed by the Government, it is exempted from the purview of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and as per Section 16(1)(c) of the Act, all the establishments which are created

under a State Act and whose employees are entitled to benefits of contributory pension are exempted from the said Act. Further, as the petitioner university is suffering from huge loss, the petitioner is unable to comply with the order of the 1st respondent. Hence, it would suffice, if this Court issues direction to the 1st respondent to entertain the appeal filed by the petitioner and to pass appropriate orders as expeditiously as possible, after affording sufficient opportunity to the petitioner.

4. Learned counsel appearing for the 2nd respondent submitted that, the Anna University of Technology, Coimbatore was established in 2006 and ever since the date of establishment, they never complied with the provisions of the Act by remitting contributions to the employees, who are employed on contract basis. Pursuant to a complaint received in the year 2019, an inspection was conducted in the Anna University of Technology, Coimbatore, as a result of which, it came to light that they failed to report compliance of the provisions of the Act. Therefore, a show cause notice was issued to them and as a result, by order dated 08.02.2022, the Enquiry Officer determined the provident fund dues to the tune of Rs.2,44,10,280/-,

as against which, the petitioner filed an appeal before the 1st respondent, which, by the impugned order, granted an order of interim stay subject to the condition that the petitioner should deposit 45% of the assessed dues, which itself is very meagre, since the 1st respondent is empowered to order for a pre-deposit of 75%. The petitioner is silent towards granting the social security coverage to those contractual employees and the said order dated 08.2.2022 passed by the second respondent reflected the sorrow faces of 2000 employees, who were engaged all over Tamil Nadu without any social security benefit in spite of the fact that they are entitled to social security benefits and the employees in all classes of designation are working for years together without claiming their benefits, to which, they are legally entitled under the Act. When a gigantic institution like the petitioner claims that remitting of the pre-deposit would stall administrative functioning, it remains an enigma. The question of exemption of employees would not arise, without submission of declaration form jointly by both the employer and the employee and without any specific declaration made by the Government. Hence, in the absence of any specific declaration for exemption made by the Government, the prayer sought for the by the petitioner cannot be entertained. Further, the said order dated 08.02.2022 passed by the 2nd respondent is based on the documents of the petitioner and the report of the Enforcement Officer. The petitioner has not only failed to comply with the provisions of the Act, but also failed to protect the interest of their own employees engaged on contract basis. The administrative reasons and financial complications stated by the petitioner are unsustainable, as the benevolent legislations cast a statutory duty and obligation on the employer for timely payment of the provident fund contributions. The provident fund contribution of the working class is a support for them after their superannuation. The financial reservoir for the distribution of benefits is filled by the employer by deducting from the workers' wages, completing it with his own equal share and duly making over the gross amount to the fund. If the employer neglects to remit or diverts the money for some other purposes, then the retirees are denied the meagre support when they are in need of it. The Act is a world class legislation meant for the welfare of the labour class. In fact, it is a strong piece of legislation, which negates any attempt by employers, who try to subvert and avoid implementing the provisions of the Act. Hence, he prayed for dismissal of this Writ petition.

5. Heard the learned counsel on either side and perused the material documents placed on record.

6. Though very many grounds have been raised by the learned counsel on either side at the time of arguments, however, considering the financial position of the petitioner management, this Court without going into the merits of the case, is inclined to modify the impugned order of the 1$^{st}$ respondent dated 12.05.2022 and the petitioner is directed to pay 30% of the dues as determined by the 2$^{nd}$ respondent instead of 45%, within a period of six weeks from the date of receipt of a copy of this order, failing which, the present beneficial order of this Court will automatically stand dismissed.

7. Upon receipt of the amount from the petitioner, the 1$^{st}$ respondent shall take up the appeal and dispose of the same on merits within a period of twelve weeks thereafter, after affording opportunity to the petitioner.

8. With the above modifications and directions, this Writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous petitions stand closed.

**16.08.2023**
(1/2)

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

1. The Central Government Industrial Tribunal,
1st Floor, B Wing, No.26, Haddows Road,
Shastri Bhawan, Chennai – 600 006.

2. The Regional Provident Fund Commissioner II,
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**M.DHANDAPANI, J.**

skt

W.P.No.5222 of 2023
and
WMP.Nos.5222, 5225 & 22336 of 2023
(1/2)

16.08.2023

WMP.No.5216 of 2023
in
W.P.No.5222 of 2023

**M.DHANDAPANI, J.**

Dispensed with for the present.

**16.08.2023**
**(2/2)**

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