IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.7361 of 2021 & W.M.P. 7865 of 2021

M/s. National Textile Corporation (TN & P) Limited
Manager's Supervisor's & Head
Office Staff Provident Fund
Represented by its Trustee,
NTC House, 35-B, Somasundaram Mills Road,
Coimbatore 641 009 ... Petitioner

Vs.

1. The Regional Provident Fund
Commissioner II (Exemptions),
Employees Provident Fund Organisation,
Bavishya Nidhi Bhavan PB No.3875
Dr. Balasundaram Road, Coimbatore 641 018.

2. The Assistant PF Commissioner (PGHS)
Employees Provident Fund Organisation,
Bavishya Nidhi Bhavan PB No.3875
Dr. Balasundaram Road, Coimbatore 641 018. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent in proceedings No.TN/CBE/7510/GAG-II/EPF EXEM/2020 dated 16.12.2020 and quash the same.

For Petitioner : Mr.R. Shivakumar
For Respondent : Ms. R. Meenakshi

ORDER

Challenge in this Writ Petition is made to the show cause notice dated 16.12.2020 issued by the Employees' Provident Fund Organisation.

2. The Writ Petitioner is the National Textile Corporation (TN&P) Limited, represented by its trustee. Their contention is that the show cause notice should have been sent to the employer and not to the trustee. According to them they are only keeping the contribution amount of the employer and the employees and therefore they cannot be issued with any show cause notice.

3. Mr.R. Shivakumar, learned counsel for the Writ Petitioner would contend that on an earlier occasion, the 2nd respondent initiated prosecution vide proceedings No.TN/RO-CBE/PGHS/2017-18/December/01 for which a written explanation was submitted by the present Writ Petitioner and that the 2nd respondent accepted the same

and dropped all further proceedings against the present Writ Petitioner. However, they have again issued the present show cause notice. It is his contention that as per Section 17 of the Employees' Provident Fund and Miscellaneous Petition Act, 1952 (herein after referred to as "EPF and MP Act") the petitioner Establishment was exempted by the appropriate authority and as per the conditions imposed on the Writ Petitioner, they have framed relevant Rules for maintaining a Trust. He pointed out Rule 10(b) of the Trust Rules, which reads as under:

> *"Notwithstanding anything contained in sub-rule (a) and (c) in this Rule if any member shall at any time be dismissed from service for serious or willful misconduct, the Trustees shall have power to forfeit the Employer's contributions in respect of the member concerned to the Fund and the interest credited in respect of such contributions. They shall credit the amount as forfeited to the credit of "Benevolent Fund" unless the company issues a direction otherwise in writing and shall be dealt with accordingly".*

He would therefore contend that the issuance of show cause notice to the Writ Petitioner Trust is totally erroneous.

4. Per contra, Ms. R. Meenakshi, learned counsel for the respondents would contend that the Writ Petitioner, without submitting any reply to the show cause notice, had directly approached this Court and that they are in the habit of challenging the various routine notices and advisories issued under the EPF & MP Act by approaching various High Courts. It is her submission that Rule 10(b) of the Trust Rules is not in consonance with the provisions of the EPF and MP Act and therefore the same is invalid. She also drew the attention of this Court to the Revised conditions for grant of Exemption under Section 17 of the EPF & MP Act, which reads as under:

> *"1. The employer shall establish a Board of Trustees under his Chairmanship for the management of the Provident Fund according to such directions as may be given by the Central Government or the Central Provident Fund Commissioner, as the case may be, from time to time. The Provident Fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees' Provident Fund Organisaiton, inter alia, for proper accounts of the receipts into and payment from the*

Provident Fund and the balance in their custody. For this purpose, the "employer" shall mean-

i. in relation to an establishment, which is a factory, the owner or occupier of the factory; and

ii. in relation to any other establishment, the person who, or the authority, that has the ultimate control over the affairs of the establishment."

5. It is clear from the provisions of the Revised conditions for grant of Exemption under Section 17 of the EPF & MP Act that the employer shall mean the person or the authority who has an ultimate control over the affairs of the establishment. In the instant case, the Trust has been formed under the chairmanship of the Employer and therefore notice issued to the Trustee cannot be said to be invalid. In fact, the Trust Rule 10(b), quoted by the Writ Petitioner, is totally in contradiction to the provisions of Section 10(1) of the EPF & MP Act, which reads as under.

"*The amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and* *shall not be liable for attachment under any decree or order of any count in respect of any debt or liability incurred by the member or the exempted employee, and neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909 (3 of 1909) nor any receiver appointed under the Provincial Insolvency Act, 1920 (5 of 1920), shall be entitled to or have any claim on, any such amount."*

In any event the Writ Petitioner has not produced any proof of approval of the Trust Rules by the Employees Provident Fund Organisation.

6. In the circumstances, the Writ Petition is dismissed as devoid of merits. No costs. Consequently connected Writ Miscellaneous Petition is closed.

01.12.2023

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Index : yes/no
Speaking /Non speaking Order

To

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R.HEMALATHA, J.

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