



W.P.No. 31794 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2023

C O R A M

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

WP.No. 31794 of 2013

and

M.P.No.1 of 2014

The Regional Provident Fund Commissioner
Employees' Provident Fund Organisation,
Sub Regional Office,
Ambattur,
R-40AI, TNHB Shopping cum Office Complex,
Mogappair East,
Chennai – 600 037.

... Petitioner

Vs

1. M/s. Southern Gasket Products,
Plot No. 57, Old No. 52, Balaji Nagar,
Padi, Chennai – 50,
Rep by its Proprietor,
R. Saisankar.

2. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar,
New Delhi – 110092.

... Respondents



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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. 427(13)2010 dated 28.01.2011 and quash the same.

For Petitioner : Mr. Viswanathan
For Respondents : Mr. T. Raghunathan for R1
for M/s. T. Gopalan & co
: Dismissed- R2

ORDER

This writ petition has been filed challenging the order dated 28.01.2011, in which, the 2nd respondent/Appellate Tribunal had allowed the appeal in ATA No. 427(13)2010, whereby, setting aside the order passed by the P.F. Authority stating that the first respondent establishment is not covered under the EPF Act.

2. (i) The case of the petitioner is that the 1st Respondent establishment was brought under the purview of the Act vide communication No. H4/TN/48215/Reg1/99, dated 06.08.1999 and allotted with PF Code No. TN/48215, whereas the 1st respondent questioned the applicability of the Act and conducted enquiry under Section 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952



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(hereinafter referred as "Act").

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(ii) Pursuant to the enquiry, the Enforcement Officer one Mr.Kuppuraj had confirmed that the 1st respondent had employed more than 20 employees and passed an order under Section 7A of the Act, vide proceedings No.TN/48215/SAO/AMB/Enf/2001 dated 29.03.2001, covering the 1st respondent under the ambit of the Act, stating that, as per attendance register, the 1st respondent had paid salary for 18 employees for the period June 1999 and also paid for 3 other persons under the head "Salary".

(iii) Subsequent to the order dated 29.03.2001 in No.TN/48215/SAO/AMB/Enf/2001, an enquiry under Section 7A of the Act were conducted and order was passed to assess the Provident Fund dues payable by the 1st respondent from June 1999 to March 2003 vide order No. TN/SAO/48215/CCII(5)/2003 dated 30.05.2003. Therefore, the 1st respondent was held liable to contribute Rs.3,23,990.90/- towards PF dues. In respect to the above order dated 21.07.2003, due to his financial crisis, the respondent disputed the quantum of amount and requested 12 equal installment to repay the dues, but did not disputed the coverage of the Act.

(iv). In meantime, the 1st respondent preferred an appeal before the



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2nd Respondent Appellate Tribunal vide Appeal No. ATA 764(13) 2003 and it was dismissed on 20.10.2003, in which, the 1st respondent was brought under the purview of the Act.

(v) Aggrieved against the impugned order, the 1st respondent challenged the order ATA 427(13)2010 before the Employees Provident Fund Appellate Tribunal and also filed W.P.No. 21365 of 2009 etc., batches, challenging the order dated 16.05.2006 under Section 7A of the Act.

(vi) On 28th January 2011, without adverting any of the documents, previous proceedings and without going into the merits of the writ petitions in WP. Nos. 14467 of 2006, 21365 of 2009 and 11718 of 2010, this Court dismissed the petitions on the ground of becoming infructuous. Aggrieved by the same, the present writ petition has been filed.

3(i) Per contra, the learned counsel for the 1st respondent submits that the issue between the parties in the present writ petition relates to the question of coverage of the establishment of the 1st respondent under the EPF Act from June 1999 and since then the respondent was obliged to carry on the litigation before EPF authorities, the EPF Tribunal and also this Hon'ble Court. There are some interim orders directing the 1st respondent to



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deposit certain adhoc amount for the grant of interim orders against the petitioner enforcing the order against the 1st respondent. Fortunately, on 28.01.2011, the EPF Appellate Tribunal passed orders holding that the 1st respondent did not have sufficient number of eligible employees warranting coverage of the establishment under the EPF Act. On the strength of the EPF Tribunal, this Court passed orders on 11.04.2011 closing the the writ petitions filed by the 1st respondent and also directed the refund of the amounts kept in deposit of the respondents. Acting on the order of this Court, the petitioner also refunded the amount to the 1st respondent. Thus, the order dated 11.04.2011 was acted upon by both the parties and it has attained its finality. Now, the order dated 11.04.2011 is under challenge in the present writ petition.

(ii) Learned counsel would further submit that the petitioner's establishment is a Factory covered under the Factories Act. It was functioning at Balaji Nagar, Padi. In the year 2012, it was shifted to Pattaravakkam, Ambattur Industrial Estate. The promoter of the Unit Sai Shankar died on 21.01.2016. Since then, the 1st respondent is running this unit. After the impugned order passed by the EPF Appellate Tribunal dated 28.01.2011 and the order of this Court dated 11.04.2011, by its letter dated



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08.01.2013 to the petitioner, the respondent informed the petitioner that the strength of the Establishment was only 10. After 08.01.2013, for nearly 10 years nothing was heard from the petitioner till the receipt of the recent communication dated 05.01.2023 of EPFO. Though in the writ petition, notice was ordered to the 1st respondent on 26.11.2013, the notice of the petitioner dated 07.01.2023 was received by the respondent on 10.01.2023 enclosing the lawyer's notice dated 03.01.2023.

(iii) Learned counsel for the 1st respondent has also referred to the order passed by this Court in W.P.No.14467 of 2006 etc. batch dated 11.04.2011, whereby the writ petitions are closed, directing to refund the amount deposited. Hence, he would pray to dismiss the writ petition.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. It is the case of the 1st respondent that it is a small scale industry engaged in the business of manufacturing industrial gaskets. The staff strength of the 1st respondent never exceeded 18. The Employees Provident Fund Appellate Tribunal only after carefully analysing all the aspects as to the applicability of the EPF Act for the 1st respondent establishment, has passed the impugned order. It would be apt and appropriate to extract



paragraph No.6 of the impugned order which reads as follows:

6. The applicability of the Act is questioned; the same has to be determined first. The burden lies on the appellant to prove its staff strength as the same was within his knowledge. In the case of Saraswati Construction Company Ltd. Vs. CBT reported in the 2010 LLR at page 684, the Hon'ble High Court of Delhi held that "it is a settled legal position that if any establishment or employer is not covered under the said Act, then it is for the employer to place sufficient cogent and convincing material before the designated authority in an enquiry under Section 7A so as to satisfy the authority with regard to non-applicability of the Act and failure to place in such material. The owners cannot shift on the EPF authority to prove the applicability of the Act". The attendance register filed shows that the appellant engaged 18 employees. The report of the Enforcement Officer also shows that the appellant engaged 18 employees. So no list of employees was furnished. So there is no material to hold that the establishment engaged 20 employees. Hence, the order of the PF authority cannot be sustained.

6. Thus, only based on the report of the Enforcement Officer showing that the 1st respondent had engaged 18 employees only, earlier this



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Court in W.P.Nos.14467 of 2006, 21365 of 2009 and 11718 of 2010 has passed a common order dated 11.04.2011, which reads as follows:

The petitioner in all the three writ petitions is the same employer. In the 1st writ petition, pending the appeal before the Employees Provident Fund Tribunal in ATA.No.764 (13) /2003, the petitioner prayed for a direction to the respondents not to coerce the petitioner from parting with amount. That writ petition was admitted on 16.05.2006. Pending the writ petition, this Court directed the petitioner to deposit Rs.2 lakhs by way of Demand Draft in favour of the Registrar of this High Court within a period of eight weeks. It is now informed by Mr.John appearing for M/s.T.S.Gopalan and CO, learned counsel for the petitioner that the said amount has already been deposited and is lying with the Registrar of this Court.

2. The second writ petition was filed by the same petitioner challenging an order issued by the Assistant Provident Fund Commissioner, Chennai, dated 16.05.2006. By the said order, the petitioner was directed to remit the amount in terms of Section 7-A of the Employees Provident Fund Act. That Writ Petition was admitted on 21.10.2009. Pending that writ petition, this Court granted an interim stay after notice to the



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Employees Provident Fund Department.

3. Even while these two writ petitions were pending, the third writ petition came to be filed in W.P.No.11718 of 2010 challenging the interim order passed by the Employees Provident Fund Tribunal dated 18.07.2005 in ATA No.620(13) 2005. In that appeal, the Tribunal refused to entertain the petitioner's challenge to the order dated 29.03.2001 passed under Section 7-A of the Employees Provident Fund Act. In that writ petition, Notice of Motion was ordered on 08.06.2010. Pending the Notice of Motion, no interim order was granted.

4. However, when the matter came up today, Mr.John, learned counsel for the petitioner brought to the notice of this Court that the Employees Provident Fund Tribunal in their appeal No.ATA 427 (13) 2010 held that the petitioner employer is not covered by the provisions of the Employees Provident Fund Act, as they have engaged only 18 employees and hence there was no need to hold that the establishment is covered by the Employees Provident Fund Act.

5. In the light of the order dated 28.01.2011, all the three writ petitions have become infructuous. In view of the fact that the Tribunal has held that Employees Provident Fund Act will not apply to the petitioner establishment, Registry is directed to refund the sum of



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Rs.2 lakhs deposited by the petitioner pursuant to the interim order passed by this Court dated 16.05.2006 in WPMP No.15250 of 2006 in WP.No.14467 of 2006. It is unnecessary to go into the merits of the writ petitions. Hence, all the three writ petitions stand closed. No costs. The connected miscellaneous petitions are also closed.

7. In view of the above, this Court is of the view that there is no need to traverse in detail about the allegations and other legal submissions made by the petitioner, as this Court has already held that employer/1st respondent is not covered by the provisions of the Employees Provident Fund Act, as they have engaged only 18 employees. Therefore, the present writ petition is liable to be dismissed. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.04.2023

Index:Yes/No

Speaking/Non-speaking order

msv/vsi

To

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar, Core-II, 4th Floor,
Laxmi Nagar District Centre,
Laxmi Nagar, New Delhi – 110092.



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J.NISHA BANU,J.

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