IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.3974 of 2015

The Assistant PF Commissioner,
Sub-Regional Office,
Employees Provident Fund Organisation,
S.J.Plaza, Swarnapuri,
Salem – 636 004. .... Petitioner

Vs

1. The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
Scope Minar Core-II,
4th Floor, Lakshmi Nagar,
New Delhi- 110 092.

2. M/s.Pachamuthu College of Arts & Science for Women
Rep. by its Chairman,
Krishnagiri Main Road,
Dharmapuri – 636 701. .... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for Writ of Certiorari to call for the records relating to the proceedings of 1st respondent dated 16.10.2014 in A.T.A.No.720 (13) 2014 and quash the order passed therein.

For Petitioner	:	Mrs.R.Meenakshi
For R1	:	Court
For R2	:	Mr.M.B.Raghavan

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 16.10.2014 in ATA No.720 (13) 2014, thereby set aside the order passed by the petitioner.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent and perused the materials available on record.

3. The second respondent is covered under the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (herein after called the "Act") and the schemes framed thereunder with effect from 01.06.2011 provisionally and allotted a Code No.TN/SLM/90087 vide APFC letter dated 23.09.2011. As per the Trust Deed dated 24.11.2004, the second respondent runs a School viz., M/s.Pachamuthu Matriculation Higher Secondary School at Dharmapuri which is also covered under the Act with effect from 01.06.2006. Therefore, the Enforcement Officer was directed to verify the records and to submit a detailed report to finalize the date of coverage. The internal audit party had scrutinized the coverage of the second respondent on 17.09.2012 and observed that the coverage is

incomplete and directed to examine the possibility of preponement of coverage. Therefore, an enquiry was ordered under Section 7A of the Act to decide the applicability and determination of dues and the second respondent was served with a summon. On request of the second respondent from the year 2013 to 2014, the enquiry was adjourned for producing the documents such as Original Attendance Register of the College, Salary Statement duly signed by the employer and Income Tax Returns along with Trust Deed.

4. Accordingly, the due payable by the second respondent was assessed for the period from August 2008 to November 2013 to the tune of Rs.32,80,947/- under Section 7A of the Act by the proceedings dated 25.02.2014. The second respondent had already remitted a sum of Rs.13,82,395/- and the second respondent was paid the remaining amount of Rs.18,98,552/-. Aggrieved by the same, the second respondent filed review on the ground that the second respondent could not produce the documents for the relevant assessment of dues. Therefore, a fresh enquiry was ordered and accordingly, the enquiry was initiated on 22.04.2014. In fact, the Vice Chairman of the second respondent attended the hearing on 22.04.2014 and stated that all the relevant records are already in the

custody of the Enforcement Officer. On his request, the enquiry was adjourned to produce relevant original records. However, the second respondent failed to produce the records.

5. Therefore, the Revision Authority concluded the review under Section 7B and confirmed the dues determined under Section 7A of the Act. Aggrieved by the same, the second respondent filed an appeal before the first respondent in ATA No.720 (13) 2014. The first respondent allowed the appeal on the ground that the petitioner should exercise all his powers to collect all evidence and collect all material before coming to proper conclusion. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person. Therefore, the first respondent had set aside the order impugned therein and allowed the appeal.

6. The second respondent filed counter stating that the principles of natural justice was denied to the second respondent and as such the first respondent rightly set aside the order passed by the petitioner, since the second respondent was not given an opportunity for

cross examination. He further submitted that if this Court directs the original authority to peruse the documents, afford an opportunity to the second respondent and pass orders, the second respondent would participate in the proceedings and advance their submissions. In the absence of the documents, which were above mentioned, the order passed by the petitioner may not be strictly in conformity with the provisions of the Act. Even the counter filed by the second respondent revealed that the documents pertaining to the period from June 2005 to April 2013 in the form of attendance registers and wages registers from August 2000 to May 2011 and November 2011 to November 2013 are still retained with the petitioner.

7. The dues are assessed based on the original attendance register, salary registers and statements which were duly signed by the second respondent and the income tax returns for the period from August 2008 to November 2013 by the petitioner. In fact, the beneficiaries list, original attendance and salary register are very much available with the petitioner. Therefore, on verification of all those documents, the Enforcement Officer itself preponed the coverage to 01.08.2008 as contemplated under Section 2(A) of the Act.

8. On perusal of the documents revealed that from the month of August 2008 onwards, the second respondent paid salary to its employees. It has also reflected in the income tax returns. Therefore, the petitioner rightly assessed the dues payable by the second respondent as Rs.32,80,947/-. Without considering the above facts and circumstances, the first respondent mechanically allowed the appeal only on the ground that the second respondent was not given an opportunity to produce the documents. All the documents were duly produced by the Enforcement Officer and after giving due opportunity to the petitioner herein, the dues was assessed. Therefore, the order passed by the first respondent is unsustainable and it is liable to be set aside and confirmed.

9. In view of the above, the proceedings dated 16.10.2014 in ATA No.720(13) 2014 is hereby quashed and accordingly, this Writ Petition is allowed.

25.08.2023

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
Lpp

To

The Presiding Officer,
Employees Provident Fund Appellate Tribunal,
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4th Floor, Lakshmi Nagar,
New Delhi- 110 092.

G.K.ILANTHIRAIYAN, J.

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