IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 20-06-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.1257 of 2023

The Salem Co-operative Sugar Mills
Matriculation School,
Mohanur – 637 015,
Namakkal District. ... Appellant

-vs-

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

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

Appeal is filed under Clause 15 of the Letters Patent against the order, dated 07.11.2022, passed in W.P.No.28835 of 2016, on the file of this Court.

For Appellant : Mr.R.Balaramesh

For Respondent 1 : Mrs.R.Meenakshi,
Standing Counsel.

JUDGMENT

(By *S.Vaidyanathan,J.*)

This appeal is preferred against the common order, dated 07.11.2022, passed in W.P.No.28835 of 2016, and confined to a portion of the said order pertaining to the appellant School.

2. It is contended by the appellant that there was a determination of the amount payable to the Employees Provident Fund Organisation (EPFO) by the Authority under the Employees' Provident and Miscellaneous Provisions Act,1952, in short, "the Act", which was questioned by the appellant management and the same was taken up in appeal viz., ATA No.520 (13) 2014 and disposed of by the second respondent Tribunal, reducing the damages from 17% to 5%, by an order, dated 19.08.2014. On appeal, in the Writ Petition, the learned single Judge, in the common order, has discussed the issue in detail and held that the discretionary power ought not to have been exercised by the Tribunal and reduced the amount of damages from 17% to 5%. Though in Paragraph 13 of the order in the Writ Petition both the appellate orders are reflected and that the appellant is directed to pay the damages within a period of 12

weeks from the date of receipt of a copy of the order in three equal instalments and the first instalment commencing from 1st December,2022, by interpreting the order of the Tribunal and the order in the Writ Petition directing the employer to pay the damages determined by the Authority, the appellant contended that there was no discussion about the appellant School and that the matter needs a detailed investigation, as there was no finding on the aspect of payment of damages payable by the appellant School.

3. Mrs.R.Meenkshi, learned counsel appearing for respondent – EPFO, would contend that the Writ Petitions pertaining to Salem Co-operative Matriculation School and Chitranjilal Spinners Ltd. were clubbed together and that an identical issue was decided by the Tribunal, reducing the damages from 17% to 5%. According to her, though there is no averment in the order in the Writ Petition with regard to the appellant School, the principle laid down in the said decision is applicable to the appellant School also. She would also contend that the amount payable towards EPF dues is less than Rs.1.40 lakhs and that the order of the Tribunal, reducing the damages, was incorrect. That apart, she contends that the appellant has agreed to pay the damages leviable at 10% of the actual amount in 24 instalments.

4. The Tribunal has recorded the submission of the management in Paragraph 9 of its order, dated 19.08.2014. For reference, Paragraphs 8 and 9 of the order of the Tribunal are scanned below :

8. In view of the facts and recording made by the respondent in the impugned order it is made clear that, there was no willful default committed by the appellant in remitting the P.F. dues; hence the penal damages should be more or less compensatory in nature. The appeal preferred by the appellant to this extent has succeeded. After hearing the arguments and counter arguments, this tribunal has come to the decision that the respondent has failed to prove on record that the appellant establishment has willfully defaulted in remitting the provident fund contributions hence the penal provision in the damages has to be ignored and has to consider to invoke the compensatory clause. Hence, keeping in view the reasons and circumstances in which the default in remittance of PF dues occurred, ends of justice be met by restricting the damages leviable to 10% of the actual amount of damages levied in the impugned order. Hence I order accordingly.

9. The Ld. Advocate for the Appellant as made a statement in the open court that the appellant is willing to liquidate outstanding revised determined amount in the impugned order, in instalments. The request of the Appellant is allowed. Accordingly, the Appellant is hereby directed to remit the outstanding revised determined amount in 24 installments be payable by the 7th October and the subsequent instalments be payable by the 7th day of every calendar month Hence I order accordingly. Copy of the order be sent to the parties. The file be consigned to the record room.

5. Though the appellant is willing to pay 10% of the damages, he would submit that the levy of damages at 17% is not correct.

6. Since the entire issue needs to be addressed in the Writ Petition and that the same has not been discussed, we are inclined to remit the matter to the learned single Judge for deciding the issue afresh in the Writ Petition.

7. Registry is directed to list the matter before the learned portfolio Judge in the month of July,2023, after ascertaining the convenience of the learned Judge.

8. The order of the Tribunal is of the year 2014. Even the agreed amount has not been paid by the appellant. Hence, without prejudice to the rights of the parties, the appellant is expected to remit 10% of the damages, as agreed, as could be seen from Paragraph 9 of the order of the Tribunal, extracted supra, within one month, if not already paid. We also make it very clear that if the amount is not paid, it will attract simple interest at 9% per annum from the date of the order of the Tribunal, dated 19.08.2014.

9. Normally, this Court would not impose interest on damages. However, since there is a concession made by the employer to pay the amount in 24 instalments, which has not been done, we are constrained to impose the aforesaid interest payable to EPFO.

10. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.12573 of 2023 stands closed.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
dixit

(S.V.N.,J.) (K.R.S.,J.)
20-06-2023

To

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