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W.P.No.32064 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.32064 of 2016
and W.M.P.No.27809 of 2016

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sri Jaya Lakshmi 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. Hotel Southson Pvt. Ltd.,
No.A/4, Bharathi Street,
Swarnapuri, Salem – 636 004,
Rep. by its Managing Director

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorari, calling for the records relating to the
proceedings of 1st respondent dated 25.08.2014 in ATA No.266(13) 2012
and quash the order passed therein.

For Petitioner : Mr.M. Palanimuthu

For Respondents : R1 – Court
Mr.Harshavardhan. S [R2]



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ORDER

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It is alleged by the Enforcement Officer that when the second respondent's establishment was inspected on 24.07.2009, it was found that 66 employees working therein, were not enrolled under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called 'the Act'). In this regard, the Authority under the Act had conducted an inquiry, in which, it is stated that the second respondent had not produced any proof to substantiate the staff's strength of the establishment and therefore, an exparte order under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, came to be passed through an order dated 31.08.2010. Challenging the same, the establishment had preferred an appeal before the Employees Provident Fund Appellate Tribunal and through the impugned order dated 25.08.2014, the determination made in the order under Section 7A of the Act dated 31.08.2010, was set aside and the appeal was allowed. Challenging the same, the Department has filed the present Writ Petition.

2. The learned standing counsel appearing for the petitioner submitted that inspite of 20 opportunities given, the establishment had not



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produced any evidence to substantiate their staff's strength. He further submitted that on verification of records of the establishment and the inspection conducted, it was found that 66 employees were not enrolled as Provident Fund members with effect from June 2009. As such, the inquiry was concluded from the period between 07/2007 to 03/2010. He further submitted that the order of the Tribunal cannot be sustained since the Tribunal had not properly appreciated the report of the Employees' State Insurance Corporation (ESIC), based on which, the non-enrolled employees were ascertained and accordingly, determination was made.

3. Per contra, the learned counsel appearing for the second respondent submitted that there is no infirmity in the order of the Tribunal since the entire determination was made on the basis of ESIC report, which was neither furnished to the second respondent nor was reflected in the order passed under Section 7A of the Act.

4. I have given careful consideration to the submissions made by the respective counsels.



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5. Section 7L of the Act provides for the procedure to be followed by a Tribunal while dealing with an order passed under the provisions of this Act. As per Sub Section 1 of Section 7L, when the Tribunal is empowered with passing of orders confirming, modifying or annulling the order or may refer the case back to the Authority which pass such order with such directions after taking additional evidence.

6. Whenever an order under Section 7A of the Act, is found to be *prima facie* illegal or against the provisions of the Act itself, the Tribunal may be justified in annulling the order. But in cases, where it is found that there are procedural irregularities in determination under Section 7A of the Act, the appropriate procedure would be to refer the case back to the Authority by directing them to follow the appropriate procedure. In the instant case, the order of the Tribunal only states about the mode in which the Authority had placed reliance on the report from the ESIC and the absence of any details in the order passed under Section 7A of the Act, as well as denial of opportunity to the establishment. This is merely a procedural irregularity for which purpose, the Tribunal could have remitted back to the Authority concerned. In the absence of the same, this Court is of



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the view that the order could be set aside and the matter may be remitted back to the Authority for conducting a fresh proceedings under Section 7A of the Act.

7. In view of such a decision being taken, this Court has not ventured into the illegality of the original order passed by the Authority concerned.

8. In the light of the above findings, the impugned order dated 25.08.2014 passed by the first respondent, is hereby quashed. Consequently, the matter is remitted back to the petitioner/Organization for fresh consideration, in accordance with the provisions of Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Before passing final orders, the Authority shall extend due opportunity of personal hearing to the second respondent herein. The Authority shall complete the proceedings as expeditiously as possible.

9. Accordingly, the Writ Petition stands ordered. No costs. Connected miscellaneous petition is closed.

31.01.2023

Speaking/Non-speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes/No

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M.S.RAMESH,J.

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To

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

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