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W.P.Nos.13593 and 13594 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.13593 and 13594 of 2018

and

W.M.P.Nos.16022 and 16024 of 2018

The Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishyanidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore - 641 018.

... Petitioner
in both W.Ps

Vs.

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

... 1st Respondent
in both W.Ps

2. M/s.Venkat Ganga Textiles,
3/48C, Sathy Road,
Kariyampalayam Village,
Near Ellapalayam Pirivu,
Annur, Coimbatore - 641 653.

... 2nd Respondent
in W.P.No.13593 of 2018



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3. M/s.Prem Durai Exports (P) Ltd.,
No.5, Prem Gardens,
Rajaji Nagar, P.N.Road,
Tirupur - 641 602.

... 2nd Respondent
in W.P.No.13594 of 2018

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the proceedings of the first respondent in A.T.A.No.713(13) 2005 and A.T.A.No.200(13) 2014 dated 29.07.2009 and 19.08.2014 and quash the same.

For Petitioner
in both W.Ps : Mr.C.Kulanthaivel

For Respondents : R1 - Presiding Officer
in both W.Ps Mr.B.Gopala Krishnan
for Mr.R.Manoharan for R2

COMMON ORDER

These Writ Petitions have been filed to quash the order of the first respondent in A.T.A.No.713(13) 2005 and A.T.A.No.200(13) 2014 dated 29.07.2009 and 19.08.2014 and quash the same.

2. The second respondent / Establishment (for brevity 'the employer' is covered under the Employees Provident Fund and



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Miscellaneous Provisions Act, 1952 (for short ‘the Act’). The default in payment of the Provident Fund, Insurance Fund and Employees Pension Fund contribution and administrative charges for “Terrain Allowance”, which were paid to the employees for varying periods, having not been paid, inquiry was initiated u/s 7-A of the Act to determine the amount due and payable by the employer and to that end, notices were issued for the appearance of the employer before the authority along with supporting documents.

3. Based on the findings of the authorised officer in the enquiry held u/s 7-A of the Act, the authority held that the various allowances paid by the employer to its employees would form part of “basic wages” and has to be taken into account for the purpose of PF calculation. However, the employer having not deducted and paid the PF contribution on the various allowances and incentives paid to the employees, computed the amount payable towards PF contribution and directed the employer to pay the amounts. Challenging the aforesaid orders, the respective employers assailed



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the same before the Appellate Tribunal and the Tribunal had quashed the order passed by the petitioner, which has resulted in filing of the present petitions.

4. The learned counsel appearing for the petitioner submitted that the employer, i.e., M/s.Prem Durai Exports (P) Limited in W.P.No.13594 of 2018 has filed an appeal before the First Bench of this Court in W.A.No.101 of 2020, wherein the First Bench of this Court had dismissed the same stating that the learned Judge in paragraph 12 of the impugned judgment has specifically recorded that no document had been produced by the appellant to show that they were declared as a sick company under the BIFR and directed the appellant to pay the damages within a period of twelve weeks from the date of receipt of a copy of that judgment.

5. The learned counsel appearing for the second respondent submitted that the petitioner has no *locus standi* to file the Writ Petitions challenging the orders passed by the Tribunal. It is the submission of the



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learned counsel that the petitioner is a quasi-judicial authorities, who having determined the liability of the employers, when their orders are put in issue before the Tribunal, the higher appellate forum, determination is binding on the petitioner and, therefore, the authority cannot file Writ Petitions challenging the orders of the Tribunal.

6. The issue that arises in the present Writ Petitions is no longer *res integra* and the very same issue came up for consideration before this Court in W.P.No.24631 of 2017 etc., batch dated 04.08.2023. The relevant portion of the order reads thus:

"27. However, the other party to the lis, viz., the individual, cannot be estopped from taking the same on appeal before a higher judicial forum. Meaning thereby, the order passed by the Tribunal in an appeal by the employer, could at best be challenged only by the employer, if it is against the employer and the authority, who passed the original order is bound to act on the basis of the order passed by the Tribunal as the Tribunal is the final arbiter under the statute insofar as the authority is concerned. Further, it should be pointed out that the order passed by the original



authority merges with the appellate order and the original authority is bound by the order passed by the appellate authority. Any other construction, if given to Section 7-L (4) would render the appeal remedy an empty formality as every time, the order of the original authority is interfered with by the appellate authority, the original authority, if permitted to rush before the higher judicial forum, including the High Court under Art. 226, then it would defeat the very intent of the Parliament in including Section 7-L (4). Only to put a stop to further litigative process, more specifically by the original authority, sub-section (4) to Section 7-L had put shackles on the original authority by making the order passed by the Tribunal a finality. The order could be challenged by the authority by way of a writ petition only when the authority is clothed with authorisation by the Central Government or Board of Trustee to prefer appeal against the order passed by the appellate authority. In the absence of any power granted by the Central Government or Board of Trustee to the authority to file appeal assailing the order passed by the appellate authority, not only the original authority is barred from filing a writ petition, but any writ petition, if entertained would be against the statute, which is not the intent of the law makers. Further, it is to be pointed out that the only situation in which the original authority could put in issue an order in



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appeal is when the authority who had passed the order is not vested with jurisdiction. In all other scenarios, the original order merges with the appellate order and the appellate order becomes final and the original authority is bound by the order of the appellate authority..

28. It is to be pointed out that when an authority performs quasi-judicial function, by passing orders in a matter, it neither acts in favour of the Government nor the individual, but is performing a duty endowed on it by the statute. The authority is immune from all attachments and realisations for and on behalf of the Government and is in no way attached with the order, as it is only the statutory prescription that is sought to be enforced by the authority and it has no personal afflictions to the said issue. In case, the order passed by the authority is not in favour of the department, at best the department, upon proper authorisation from the Government could seek further judicial recourse but it is not open to the original authority, who passed the order, without any authorisation, to challenge the order passed by the Tribunal.

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30. The decision of the Apex Court in Mohtesham Mohd. Ismaili case (supra) clearly sets at naught the order passed by the learned single Judge in W.P. Nos.17518/2010,



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etc. Batch, dated 21.06.2011, which has been referred to by the petitioner and also adverted to by this Court in the earlier portion of this order. In the absence of any explicit authorisation granted to the petitioner by the Central Government to file appeal/writ petition against the order passed by the appellate authority/Industrial Tribunal, the act of the petitioner in filing the present petitions is not only beyond its jurisdiction, but is also against the statute, which cannot be permitted to be continued.

31. When the appellate authority, in unequivocal terms, has rendered a categorical finding that the findings arrived at by the original authority, which are on the basis of facts, are erroneous, it does not lie in the mouth of the petitioner to contend that the act of the employer in tampering with the basic wages to their benefit is a question of law, which has to be gone into by this Court, is nothing but trying to split hairs in order passed by the appellate authority. When the appellate authority has clearly spelt out that the Act clearly defines basic wages and so long as the language of the enactment is without any ambiguity, the definition provided to any term therein has to be interpreted plainly and, therefore, original authority is bound by the language of the enactment and cannot borrow the language from any other enactment to suit its taste is a clear exposition of the ratio, which has been



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laid down time immemorial in respect of the manner in which a statute has to be understood and in the said context, this Court is of the considered view that the decision arrived at by the appellate authority, on the basis of the facts placed before it, cannot be the basis for this Court to entertain the writ petitions, more so, when the petitioner has no authorisation to act on behalf of the Central Government by filing the present petitions.

32. When the petitioner has no authorisation to file the writ petitions on behalf of the Central Government or Board of Trustee, challenge made to the order of the appellate authority by filing the writ petitions is an act without jurisdiction of the authority and, therefore, the writ petitions deserve to be dismissed by confirming the order passed by the Tribunal."

7. Following the same, these Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

01.09.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No



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M.DHANDAPANI, J.

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