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W.A. No.1028 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.1028 of 2020 and C.M.P. No.12601 of 2020

1 The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
Sub-Regional Office
S1, TNHB Phase III
Sathuvachari
Vellore 632 009

2 The Recovery Officer
Sub Regional Office
Employees Provident Fund Organisation
Sub-Regional Office
S1, TNHB Phase III
Sathuvachari
Vellore 632 009

Appellants

v

Ninety Nine Beedi Factory
Rep. by its Proprietor K. Azhar
8, Commissary Bazaar
Vellore 632 004

Respondent

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 07.09.2020 passed in W.P. No.13371 of 2019.

For appellants
For respondent

Mr. R. Thirunavukarasu
Mr. K.M. Aasim Shehazd
for M/s. BFS Legal



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JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

This writ appeal is directed against the order dated 07.09.2020 passed by a Single Bench in W.P.No.13371 of 2019.

2 For the sake of convenience, the parties will be adverted to as per their rank in this writ appeal.

3 According to the learned counsel for the respondent, against the very same period which is the subject matter of the order dated 19.02.2019 passed by the first respondent which was impugned in W.P. No.13371 of 2019, the claim has been made and the matter is subjudice before the Employees Provident Fund Appellate Tribunal and that fact has been admitted by the appellants themselves in the counter affidavit filed by them in the said writ petition viz., W.P. No.13371 of 2019, the relevant paragraph of which reads thus:

“8. The EPF Appellate Tribunal, vide its common order No.S-35011/13(18)/80/PFC/259 dated 1.10.1997, dismissed the appeal and observing that the issues raised by the petitioners have been dealt with by the Hon'ble Supreme Court and Hon'ble Madras High Court and there is no scope for any further argument.

9. The employer again challenged the order dated 01.10.1997 in a Writ Petition No.5051/1998 filed before the Hon'ble High Court of Madras, on the grounds that it was not passed on merits. The Hon'ble High Court of Madras, in its common order dated 19.12.2000 (which concerns



other petitions on similar grounds), set aside the order dated 1.10.1997 passed by the EPF Appellate Tribunal remitted the matter to the Hon'ble EPFAT with a direction to hold an enquiry, permitted the petitioners to adduce oral and documentary evidence, provide a hearing and to pass appropriate orders in the matters within a period of six months, in the light of the norms laid down by the Supreme Court in P.M. Patel & Sons vs. Union of India and others reported in 1987 SC 447 – 1986 1 LLJ 88. Thereafter, no orders seem to have been passed by the Hon'ble EPF Tribunal and as per the records available, the Tamil Nadu State Beedi Manufacturers Association, in its letter dated 02.08.2004 addressed to the EPF Appellate Tribunal, New Delhi, has stated that the issue has been settled with the Labour Unions under a 12(3) settlement under the Industrial Disputes Act, 1947, before the Joint Commissioner of Labour, Chennai, vide No.D/2954/2004 dated 19.05.2004 and prayed that the appeal filed under Section 19-A which had been transferred to the EPFAT may be treated as withdrawn. The petitioner also filed an affidavit seeking withdrawal of the petitioner pending with the Hon'ble EPFAT, New Delhi (as communicated vide petitioner's letter dated 04.04.2008) Ex.-R.1).

4 The learned counsel for the respondent submitted that several establishments approached the authority and the High Court, and some of them have withdrawn the cases to settle the matter; but, even though the respondent was willing to settle the matter in the same lines, the respondent's request has not been accepted by the appellants. It is his further submission that against the common order dated 01.10.1997 passed by the Employees Provident Fund Appellate Tribunal in No.S-35011/13(18)/PFC/259, a writ petition being W.P. No.5051 of 1998 was filed and the order of the Employees Provident Fund Appellate Tribunal was set aside and the matter was remanded to the Employees Provident Fund Appellate Tribunal; at that time, the Employees Provident Fund Appellate Tribunal was in Delhi alone and it did not have any other Bench; after bifurcation,



Government Industrial Tribunal as the Employees Provident Fund Appellate Tribunal, the matter has been transferred; yet, the appeal has not been disposed of and the respondent apprehends that the papers could not be traced out even by the Employees Provident Fund Appellate Tribunal.

5 The learned Standing Counsel for the appellants submitted that the contention of the respondent that the claim is for the same period is incorrect and that if that being the case, nothing prevented the respondent from filing an appeal in terms of Section 7-I of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, questioning the order dated 19.02.2019 and had there been any overlapping of claim, certainly, the Employees Provident Fund Appellate Tribunal is empowered to disallow the claim in favour of the appellants and direct payment of the remaining amount by the respondent to the appellants.

6 At this juncture, it would be useful to extract paragraph 6 of the order passed by the Single Bench:

“6. In that view of the matter, this Court without expressing any view on the correctness or entitlement on the merits of the claim made by the Petitioner, requires the First Respondent to duly consider the aforesaid representation dated 27.08.2020 made by the Petitioner and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment. Before carrying out that exercise, if the First Respondent is of the view that the Petitioner would not be entitled for extending the same benefit, the deficiencies in that regard shall be informed in writing to the Petitioner requiring the same to be furnished within a time frame of not less than 10 working days that may be granted for that purpose. In the event of the First Respondent rejecting that



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representation made by the Petitioner thereafter, it shall be incumbent upon the First Respondent to await for the final decision in the pending appeal before the Appellate Authority before proceeding to pass any other order under Section 7-A of the Act. It is needless to add here that the Petitioner and Respondents shall take immediate steps for transmission from the records from the Registry of the Appellate Authority at Delhi to its Bench established at Chennai.”

7 When the appeal has been preferred by the respondent, it is for them to bring the same for hearing before the appropriate Employees Provident Fund Appellate Tribunal. Leaving that, contending that the matter is pending before the Employees Provident Fund Appellate Tribunal and not proceeding with the said appeal or the present appeal on the ground that there is an order, which has been extracted supra, cannot be countenanced.

8 Hence, we are of the view that when the respondent has circumvented the appellate remedy, no relief could be granted to the respondent. However, we permit the respondent to prefer an appeal within a period of 30 days from the date of receipt of a copy of this judgment and the Employees Provident Fund Appellate Tribunal before which the appeal is going to be filed, shall call for the records in S.35011/13(20)80/PFC/267. It is needless to mention that the appellants can consider the request of the respondent to extend the concession made to the other establishments in the batch of cases as per the respondent's representation dated 27.08.2020 and pendency of appeal, if any, filed, need not be



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the appeal is not filed within a period of thirty days from the date of receipt of a copy of this judgment, it is open to the appellants to take coercive steps to recover the amount from the respondent. Once the appeal is filed along with the waiver petition, the Employees Provident Fund Appellate Tribunal is expected to decide the waiver petition within fifteen days from the date of receipt of such petition, of course, after issuing notice to the appellants. Till the waiver application is decided, no coercive steps shall be taken by the EPFO.

This writ appeal stands disposed of in the above terms. Costs made easy.
Connected C.M.P. is closed.

(S.V.N., J.) (K.R.S., J.)
10.08.2023

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